U.S. International Development Finance Corporation
Office of Inspector General

REPORT OF INVESTIGATION

Alleged Misconduct by (b) (6), (b) (7)(C)

23-001-I ♦ September 2023

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INTRODUCTION

In March 2022, the U.S. International Development Finance Corporation (DFC), Office of Inspector General (OIG), received information that [redacted], was also working for a private investment company. OIG conducted a Preliminary Inquiry under File 22-007. The inquiry revealed that [redacted] was working for a private investment company while working as an employee at DFC, with the knowledge and concurrence of DFC ethics officials. The private investment company featured [redacted] on its website as a [redacted], with a bio indicating [redacted] was a [redacted] at DFC, which created the appearance of a conflict of interest. When [redacted] was advised of this by OIG, [redacted] contacted the company and had the listing removed. [redacted] also updated [redacted] LinkedIn profile to reflect that [redacted] association with the company had ended. On May 25, 2022, OIG provided a report to DFC management, which took no action (because action had been already taken by [redacted]).

On June 8, 2022, a whistleblower requesting confidentiality contacted OIG and reported that [redacted] may have tried to trick [redacted] into admitting that [redacted] made a complaint to OIG, in preparation for retaliating against [redacted] in the mistaken belief that [redacted] provided the information to OIG that initiated the inquiry under File 22-007. The complainant requested that OIG not take any action at the time. The information was logged under File 22-009.

On October 5, 2022, OIG initiated an investigation under File 23-001 upon receipt of a complaint from the whistleblower that [redacted] circumvented hiring procedures to bring on a former business associate as [redacted]. On November 29, 2022, OIG received a subsequent written complaint from the whistleblower with additional allegations concerning [redacted]. The complaint alleged, among other things, travel policy violations and conflicts of interest (in addition to the previously reported whistleblower retaliation and improper hiring allegations).

INVESTIGATIVE ACTIVITY

I. WHISTLEBLOWER REPRISAL

Allegation

[redacted] retaliated against the whistleblower based on the erroneous belief that [redacted] initiated an OIG complaint against [redacted] in March 2022 and other personal grievances by, among other things: issuing [redacted] a Letter of Concern on June 30, 2022; giving [redacted] a poor performance rating for FY2022 on November 9, 2022, with no performance bonus for FY2022; and recommending that [redacted] be removed from federal service and placed on administrative leave on [redacted] 2023.

Facts

On June 8, 2022, the whistleblower contacted OIG and reported that [redacted] may have tried to trick [redacted] into admitting [redacted] made a complaint to OIG, in preparation for retaliating against [redacted] in the mistaken belief that [redacted] provided information to OIG that initiated a previous inquiry regarding an apparent conflict of interest. The complainant requested that OIG not take any action at the time.

On June 30, 2022, [redacted] issued a Letter of Concern to the whistleblower for alleged behavior and attitude issues.

On October 5, 2022, the whistleblower reported to OIG that [redacted] circumvented hiring procedures to bring on a former business associate as [redacted]. On November 29, 2022, the whistleblower submitted a written complaint to OIG with additional allegations concerning [redacted], including travel policy violations and conflicts of interest.

On December 1, 2022, the whistleblower informed OIG that Human Resources told [redacted] that DFC was planning to take a personnel action against [redacted].

On December 5, 2022, Inspector General (IG) Tony Zakel met virtually with Chief Executive Officer (CEO) Scott Nathan and briefed him on concerns that taking action against the whistleblower could constitute retaliation. IG Zakel requested that CEO Nathan intercede with respect to the proposed personnel action, which the OIG at that time understood to include a poor performance rating for the end of FY2022 and thus no performance bonus. CEO Nathan requested that OIG communicate the concern to DFC's Office of General Counsel (OGC).

On December 6, 2023, OIG Senior Attorney [redacted] sent an email to OGC attorney [redacted], Associate General Counsel, [redacted], stating:

I am writing to inform you of a proposed adverse personnel action and request that DFC stay that action pending the conclusion of an OIG investigation, as the proposed action is alleged to be in retaliation for a protected disclosure. During the course of an OIG investigation, a DFC employee made allegations of misconduct against a DFC senior manager. In addition to the alleged misconduct, the employee alleged that the manager initiated an adverse personnel action against [redacted] (i.e., a poor performance evaluation) in retaliation for disclosing information to the OIG, among other things. We consider the employee to be a whistleblower. Thus, any adverse personnel action could be deemed an act of illegal whistleblower retaliation. As such, it could subject DFC to potential damages and other negative consequences. Our investigation is ongoing and we have not made any final determinations about the allegations. However, I am writing to inform you about this matter so DFC has the benefit of whatever counsel you deem appropriate before it takes any action that could harm the Corporation.

On [redacted] 2023, the whistleblower informed OIG that [redacted] called [redacted] into [redacted] office, served [redacted] with a letter recommending [redacted] removal from federal service, and placed [redacted] on administrative leave.

On January 23, 2023, OIG contacted the Office of Special Counsel (OSC)[1] and discussed the whistleblower retaliation claim with an OSC attorney. OIG provided the whistleblower with contact information for OSC.

During the afternoon of January 23, 2023, IG Zakel and Deputy IG/General Counsel [redacted] met with CEO Nathan and VP/General Counsel [redacted] to let them know that, based on the whistleblower's report that [redacted] was being proposed for removal from federal service and placed on administrative leave, OIG was going to request in writing that DFC stay any pending or planned personnel actions against the whistleblower until the OIG investigation was complete. VP [redacted] asked why OIG was sending this request in writing. IG Zakel responded that from OIG's perspective the matter had escalated. That is, what OIG initially believed was an issue of a poor performance rating and no performance bonus in December 2022 had escalated in January 2023 to a proposed removal and placement on administrative leave. VP [redacted] disagreed that there was any escalation and stated that DFC had started the process of taking these actions prior to the whistleblower coming to OIG on June 8, 2022; thus, there was no escalation. VP [redacted] asserted that the email from OIG Attorney [redacted] to OGC Attorney [redacted] on December 6, 2022, suggested that DFC could take whatever action it deemed appropriate as long as it had the benefit of OGC's counsel. VP [redacted] stated that DFC took this into consideration when it made the decision to propose the whistleblower's removal from federal service and placement on administrative leave and reiterated that DFC started the disciplinary process prior to the whistleblower approaching OIG on June 8, 2022.

[1] OSC is an independent federal investigative and prosecutorial agency whose primary mission is to protect federal employees from prohibited personnel practices, especially reprisal for whistleblowing.

On January 24, 2023, IG Zakel sent a letter to CEO Nathan stating:

> I am writing to formally request that DFC stay any pending or planned personnel actions against [the whistleblower] until OIG completes our investigation into allegations that [the whistleblower] is being reprised against for allegations made to the OIG. OIG has determined that [the whistleblower] has made a protected disclosure... OIG continues to investigate both the underlying allegations as well as the allegation of reprisal for the protected disclosure. The personnel action is being proposed by the very official against whom the allegations were made. We request that you pause any proposed personnel actions against [redacted] until we issue our report into the allegations of whistleblower retaliation against [redacted].
>
> Our investigation is ongoing. However, based on the information we have obtained thus far, there are reasonable grounds to conclude that the personnel actions against [the whistleblower], including a failing performance evaluation, placement on administrative leave, and proposed removal from federal service, were retaliatory and thus illegal under 5 U.S.C. § 2302(b)(8)(B). To protect DFC and the integrity of the OIG investigation, we request that DFC stay any actions against [the whistleblower] until our investigation is complete and OIG issues its report. At that time, DFC will have the opportunity to review and respond to the OIG Report of Investigation, including to present the agency's rebuttal with clear and convincing evidence to support the personnel actions.
>
> As we mentioned yesterday, we have also informed the Office of Special Counsel (OSC), as OSC has ultimate authority over whistleblower retaliation complaints.

[redacted] resigned from federal service, effective [redacted], 2023.

On February 14, 2023, IG Zakel and DIG [redacted] met virtually with CEO Nathan and VP [redacted] to discuss, among other things, whistleblower rights and protections, and the procedures and standards OIG uses in conducting its administrative investigations. During the meeting, CEO Nathan expressed concerns with certain aspects of the OIG investigation, which had apparently been relayed to him by [redacted].

On February 16, 2023, OIG contacted OSC regarding recent discussions OIG had with DFC management. By mutual agreement, OIG and OSC decided that OIG would suspend its investigation of the whistleblower's retaliation claim to allow OSC to independently investigate the retaliation claim. Meanwhile, the OIG would continue to investigate the other allegations of misconduct by [redacted].

On [redacted] 2023, the whistleblower returned to work at DFC.

On August 28, 2023, OSC sent DFC a settlement memorandum summarizing the preliminary results of OSC's investigation of the whistleblower's retaliation claim.

Law

5 U.S.C. § 407 (Inspector General Act of 1978, as amended)

> (c) Prohibition on Reprisal. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to that authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

5 U.S.C. § 2302 (Prohibited Personnel Practices)

Under Section 2302(a)(2), a "personnel action" includes: an appointment; a promotion; a detail, transfer, or reassignment; a removal; a performance evaluation; or a decision concerning pay, benefits, awards, or training, if that training could reasonably be seen to effect change in any of the above; or any other significant change in duties, responsibilities, or working conditions.

Section 2302(b) provides:

> Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority–
>
> > (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of–
> >
> > > (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences–
> > >
> > > > (i) any violation of any law, rule, or regulation, or
> > > > (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,
> > > >
> > > > if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;
> > >
> > > (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences–
> > >
> > > > (i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement. a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of–

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law.

Criteria for Reprisal Allegations

Under Title 5, whistleblowers claiming retaliation are required to first demonstrate that they were in fact victims of retaliation by a *preponderance of the evidence*. To do so a whistleblower must present evidence that it is more likely than not that:

(1) the employee made a protected disclosure or activity;
(2) the employee then faced an adverse personnel action or threatened action; and
(3) the protected disclosure or activity was a contributing factor in the decision to take or threaten the adverse personnel action.

A protected disclosure or protected activity is a contributing factor if it plays any part in an agency's decision to threaten, propose, take, or not take a personnel action. By statute, an employee may demonstrate through circumstantial evidence that a disclosure or activity was a contributing factor. As an example of such circumstantial proof, 5 U.S.C. § 122l(e)(1) states that a contributing factor may be shown through evidence that a personnel action was taken or threatened soon enough after a protected disclosure or activity that a reasonable person could conclude that the disclosure or activity played some part in the action or threatened action.

Under the Title 5 rubric, if the employee presents evidence that it is more likely than not that all three requirements are present, the agency can still prevail by establishing by *clear and convincing evidence* that it would have taken the same action absent the protected disclosure or activity. Clear and convincing evidence is greater than a preponderance and "is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established." 5 C.F.R. § 1209.4(e). When determining whether an agency has shown by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected disclosure or activity, the three factors considered are:

(1) the strength of the agency's evidence in support of its adverse personnel action;
(2) the existence and strength of any motive to retaliate on the part of the official(s) involved in the decision to take the adverse action; and
(3) any evidence as to how the agency has acted against similarly situated employees who have not made protected disclosures or engaged in protected activities.

Analysis

On August 28, 2023, OSC sent DFC a settlement memorandum summarizing the results of OSC's investigation of the whistleblower's retaliation claim. OSC noted that its findings were for settlement purposes and were preliminary and based on its current evidence. Nonetheless, these preliminary findings are the result of a thorough investigation conducted by a neutral party with expertise in whistleblower reprisal claims. As such, they are entitled to considerable weight.

OSC preliminarily found it likely that the whistleblower has a *prima facie* case of whistleblower reprisal. This represents a finding by a preponderance of the evidence: that the whistleblower made a protected disclosure; that the retaliating official ([redacted]) had knowledge of the protected disclosure; that the retaliating official took or threatened to take an adverse personnel action against the whistleblower; and that the protected disclosure was a contributing factor to the personnel action. Further, OSC preliminarily found it unlikely that DFC can meet its burden to rebut the *prima facie* case by showing through clear and convincing evidence that it would have taken the same personnel actions in the absence of the whistleblower's disclosure. Accordingly, OSC recommended that DFC consider a variety of corrective actions as it pursues a settlement with the whistleblower.

Significantly, OSC found that [redacted] created a hostile work environment for the whistleblower. OSC observed that, "[s]oon after arriving, [redacted] angered or scared [redacted] staff in [redacted], even staff whom [redacted] cited as supporters." OSC further observed that "[w]itnesses within [redacted] described [redacted] as condescending and dismissive with explosive anger, often expressed publicly, and as someone who bears ***grudges***." (Emphasis in original.) Indeed, [redacted] admitted in an interview with OSC that the whistleblower "had sought employment in [redacted] professional circles, and [redacted] had and would continue to prevent [redacted] from obtaining such employment."

Based on the foregoing, OIG considers the allegation of whistleblower reprisal to be substantiated.

II. IMPROPER HIRING PRACTICES

Allegation

[redacted] circumvented hiring procedures to bring on former business associate [redacted] to serve as [redacted]. [redacted] was hired as a contractor because [redacted] wasn't willing to report to Washington, DC as a full-time hire until summer 2023. Although contractors are prohibited from having supervisory responsibilities, [redacted] told staff to treat [redacted] as the [redacted]. Further, [redacted] led DFC meetings and traveled to represent DFC. [redacted] staff were concerned that [redacted] had been terminated by [redacted] previous employer.

Facts

On [redacted], 2021, [redacted] sent an email to [redacted] Gmail account regarding a job announcement for a position in [redacted], saying: "I didn't see your name in the first cut, so thought I'd ask. I'm also going to post [redacted] position (for which I can also pull folks from the head of [redacted]). If you're interested, I finally have some time to chat. I'll also be in [redacted] late next week if time zones easier. [redacted]." [redacted] replied that [redacted] was interested in the position, and they made arrangements to speak. (EXHIBIT 1)

On December 22, 2021, [redacted] sent an email to [redacted] with a link to the job announcement. (EXHIBIT 2)

The announcement, which was for a [redacted], stated:

> [redacted]
>
> The position sensitivity/risk was determined to be "Critical-Sensitive (CS)/High Risk." The announcement stated: "Must be able to obtain and maintain a ***Top Secret security clearance.***" (Emphasis added.)
>
> The location of the position was Washington, DC. (EXHIBIT 3)

On December 21, 2021, [redacted] signed a Position Designation Record stating that the position required a ***Secret security clearance.*** (Emphasis added.) (EXHIBIT 4)

According to OHRM, 50 candidates applied for the advertised position but only 8 of those applicants completed the MTQs required by the application. All 8 of the candidates who completed the MTQs were found qualified and were referred to the selecting official, [redacted], then residing in [redacted], was selected on [redacted], 2022, and approved by the hiring official to enter on duty in the summer of 2023, tentatively on [redacted], 2023.

On May 23, 2022, DFC Security declined to issue an interim security clearance to [redacted], pending completion of [redacted] full background investigation. DFC Director of Security [redacted] stated:

> [redacted] is currently employed as a contractor working remotely as a [redacted] as of 09/12/2022. [redacted] current position only requires [redacted].

There was a prior DFC Employee packet that was submitted back in April of [2022], but it was cancelled. The initial packet required a Secret clearance which was unable to be granted an interim due to [redacted]. (EXHIBIT 5)

On July 17, 2022, [redacted] sent an email to [redacted] staff saying: "As mentioned at the pipeline meeting this week, [redacted], who will join [redacted] as the [redacted] in [redacted] and [sic] will be in the office [redacted] to introduce [redacted] and get to know the team. Please make [redacted] feel welcome!" (EXHIBIT 6)

On August 1, 2022, [redacted] requested a waiver from Security for "[redacted]. In a *Request for Waiver of Preappointment Investigative Requirements For* ***Noncritical-Sensitive*** *Positions* (emphasis added) signed by [redacted] on August 1, 2022, [redacted] stated: "In accordance with the provisions Code of Federal Regulations Part 1400.202, it is requested that the pre-appointment investigative requirements be waived for [redacted]" (EXHIBIT 7)

On August 8, 2022, HR Specialist [redacted] OHRM, told Security: "[redacted] is going to bring [redacted] in a contact position until next summer. We are aiming for an EOD into the Federal position in [redacted] 2023." (EXHIBIT 8)

On August 16, 2022, DFC awarded a sole-source "non-personal services contract for temporary staffing to act as [redacted]" to [redacted], obligating $[redacted] for services, plus $[redacted] for travel. (EXHIBIT 9)

On September 2, 2022, [redacted] sent an email to [redacted] staff saying: "We have lots of new joiners on [redacted]." (EXHIBIT 10)

OIG contacted Assistant Regional Security Officer (ARSO) [redacted], US Embassy, [redacted], and asked if [redacted] approved [redacted] to perform [redacted] official DFC duties in [redacted], and if so to provide details of the approval. ARSO [redacted] provided email documentation dated May 10, 2022, from U.S. Embassy Human Resources Officer [redacted] to [redacted] OA, declining a Domestic Employee Teleworking Overseas (DETO) request from DFC for [redacted]. The email stated: "I have spoken to both our MGMT Counselor and S/RSO and while we empathize with the situation we cannot approve someone to DETO [redacted]."

On October 25, 2022, AIGI [redacted], OIG Senior Attorney [redacted], and ARSO [redacted] interviewed [redacted] at [redacted] residence in [redacted].

[redacted] said [redacted] serves as a [redacted] to [redacted] under a contract with [redacted], starting [redacted] 2022. [redacted] said [redacted] works across the full chain from [redacted] but does not manage staff or handle budgets. [redacted] works for [redacted], with whom [redacted] previously sat on an investment committee of fund manager [redacted]. [redacted] previously applied for the position of [redacted], posted in Washington, in early 2022. [redacted] was tentatively selected and was asked to fill out an E-Qip. When [redacted] found out that [redacted], [redacted] asked to be able to telework full-time from [redacted] home in [redacted]. [redacted] was told by DFC that that it would not be possible for [redacted] to be a direct hire based in [redacted]. [redacted] was told that DFC could not defer [redacted] entry on duty date for the year and needed someone to fill the role of [redacted] so the DFC team passed [redacted] CV to [redacted]. [redacted] later received an offer of employment from the [redacted]. DFC said [redacted] could be temporarily employed as a contractor and transition to a direct hire [redacted] later. [redacted] attended a DFC online employee orientation and was introduced to the rest of the team. (EXHIBIT 11)

On October 25, 2022, AIGI [redacted], OIG Senior Attorney [redacted], and ARSO [redacted] visited the premises of [redacted] in [redacted]. Staff at the location said that [redacted] no longer worked there and that it had new owners. They provided contact information for [redacted] in [redacted].

On October 27, 2022, AIGI [redacted] spoke with [redacted], CEO of [redacted]. [redacted] said [redacted] was a [redacted] at [redacted]. [redacted] stated that [redacted] took over management of [redacted] in June 2022 at the request of investors because performance of the fund was suboptimal due in part to macro issues but also poor management. The three managers, including [redacted], were let go because there was not a place for senior managers in the fund structure, as [redacted] prefers to grow junior members. [redacted] said [redacted] was a "good [redacted]," honest, and had integrity and was the best of the three managers who were let go.

On December 21, 2022, AIGI [redacted], OIG GC [redacted], and OIG Senior Attorney [redacted] interviewed [redacted] in the OIG's office.

[redacted] stated that [redacted] and [redacted] served on the [redacted] in [redacted] together, and only had a six-month overlap. [redacted] stated that [redacted] probably sent [redacted] an email on [redacted], 2021, advising that [redacted] was going to post an announcement for a vacancy for [redacted].

[redacted] said that [redacted] was previously employed at [redacted]. The [redacted] was invested in [redacted] and was unhappy with the fund's performance. [redacted] were not great investors, and there were macro issues as well – it is difficult to make a profit in [redacted]. [redacted] said that [redacted] worked with [redacted] in [redacted], which took over the fund and removed the General Partners (GP), including [redacted]. [redacted] said that it is common in the industry to remove a GP when fund performance is not up to par. [redacted] said that [redacted] had no evidence that [redacted] was personally fired. [redacted] said that [redacted] has emerging market experience, and that the "lack of success is a learning point."

[redacted] said that on November 21, 2022, [redacted] met with [redacted]. [redacted] asked them if they had been spreading rumors that [redacted] had [redacted]. [redacted] said it was in their professional realm to know that GPs are removed when fund performance is not up to par. [redacted] said that [redacted] does not like people on the team being personally attacked, even if they are a contractor.

[redacted] said that [redacted] was selected by a senior leader hiring process with an independent panel, in November 2021, not by [redacted] individually. There was a hiring freeze in effect. When [redacted] was finally offered the position in [redacted] 2022, [redacted], so [redacted] opted to remain in [redacted] until summer 2023. [redacted] said that DFC attempted to obtain a DETO approval from the U.S. Embassy in [redacted] for [redacted], but it was refused. [redacted] said it was the first time [redacted] had attempted to obtain a DETO for staff.

[redacted] recalled that there was also an issue with respect to [redacted] being eligible for an interim security clearance, though [redacted] did not recall what it was. [redacted] requested and received a waiver of [redacted] security clearance requirement from DFC Security – something [redacted] said [redacted] has done for others. Later, [redacted] was speaking with OSFI VP [redacted], who said that [redacted] had third-party contractors deployed overseas [who did not require a DETO]. [redacted] then proposed that [redacted] be brought on as a contractor. [redacted] was advised by OGC that it was a way to hire [redacted].

[redacted] said that [redacted] is a [redacted], in a contract position. [redacted] remembered once announcing that [redacted] was a [redacted]. [redacted] said that was a mistake. [redacted] denied that [redacted] has supervisory or managerial responsibilities. [redacted] said [redacted] has chaired meetings in [redacted] absence, including a [redacted].

[redacted] did not recall if [redacted] received any warnings from DFC's Ethics Officer with respect to hiring [redacted]. (EXHIBIT 12)

On [redacted], 2023, [redacted] chaired screening meetings for [redacted], and [redacted]. [redacted] decided to proceed both deals to due diligence. (EXHIBIT 13)

OIG consulted with the U.S. Office of Personnel Management (OPM) about the facts surrounding [redacted] security clearance. OPM expressed concern that when [redacted] could not obtain an appropriate interim security clearance for a civil service position, [redacted] was contracted, seemingly to downgrade clearance requirements.

II.A. Improper Hiring Practices – Waiver of Security Clearance Requirements

Law

5 C.F.R. § 1400.202(a)(1) provides (emphasis added):

> A waiver of the preappointment investigative requirement contained in section 3(b) of Executive Order 10450 for employment in a national security position ***may be made only*** for a limited period:
>
> (i) ***In case of emergency*** if the head of the department or agency concerned finds that such action is necessary in the ***national interest***; and
>
> (ii) When ***such finding is made part of the records*** of the department or agency.

5 C.F.R. § 1400.202(a)(2)(ii) provides (emphasis added):

> For positions designated **Critical-Sensitive** under this part, the records of the department or agency required by paragraph (a)(1) of this section must document the decision as follows:
>
> (A) The ***nature of the emergency*** which necessitates an appointment prior to completion of the investigation and adjudication process;
>
> (B) A ***record demonstrating the successful initiation of the required investigation*** based on a completed questionnaire; and
>
> (C) A ***record of the Federal Bureau of Investigation fingerprint check*** portion of the required investigation supporting a preappointment waiver.

5 C.F.R. § 1400.202(a)(2)(iii) provides (emphasis added):

> When a waiver for a position designated **Noncritical-Sensitive** is granted under this part, the ***agency head will determine documentary requirements*** needed to support the waiver decision. In these cases, the agency must ***favorably evaluate the completed questionnaire and expedite the submission of the request for an investigation*** at the appropriate level.

Analysis

The position that [redacted] was selected for was advertised as a ***Critical-Sensitive (CS)/High Risk*** position requiring a ***Top Secret security clearance***. Before [redacted] was selected, [redacted] signed a Position Designation Record that classified the position as requiring a ***Secret security clearance***. After [redacted] was selected, DFC Security declined to issue [redacted] an interim Secret security clearance due to [redacted] because of [redacted]. DFC prepared a waiver for [redacted] using a *Request for Waiver of Preappointment Investigative Requirements For **Noncritical-Sensitive** Positions.* [redacted] position on the waiver form was listed as [redacted] [redacted] signed the waiver form on August 1, 2022.

OIG requested any records justifying the downgrade of [redacted] position from Critical-Sensitive to Noncritical-Sensitive, and any records satisfying the requirements of 5 C.F.R. § 1400.202, including the nature of the emergency and national interest justifying the waiver. OHRM provided emails discussing and transmitting the waiver form. However, none of the emails gave a justification for the downgrade or the basis of the waiver. Thus, DFC failed to comply with 5 C.F.R. § 1400.202 when it waived [redacted] pre-appointment security investigation.

Further, given the prior relationship between [redacted] and [redacted] and the considerable lengths to which [redacted] went to hire [redacted], the waiver of pre-appointment investigative requirements for [redacted] has the appearance of impropriety (i.e., favoritism over security interests).

II.B. Improper Hiring Practices – Use of Third-Party Contract

Law

48 C.F.R. Chapter 1 is the Federal Acquisition Regulation (FAR).

- DFC is subject to the FAR because it is an "executive agency" under 48 C.F.R. § 1.101. See 48 C.F.R. § 2.101 (defining "executive agency" to include a "wholly owned Government corporation within the meaning of 31 U.S.C. 9101"); 31 U.S.C. § 9101(3) (defining "wholly owned Government corporation" to include DFC).
- 48 C.F.R. § 2.101 defines a "personal services contract" for purposes of the FAR as "a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see 37.104)."
- 48 C.F.R. § 37.104 governs personal services contracts under the FAR.
    - Section 37.104(a) states: "A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless

Congress has specifically authorized acquisition of the services by contract."

- Section 37.104(b) states: "Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C. § 3109) to do so."
- Section 37.104(c)(1) states in part: "An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee."
- Section 37.104(c)(2) states in part: "Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract?"
- Section 37.104(d) provides the following factors to assess whether a proposed contract is personal in nature:

  (1) Performance on site.
  (2) Principal tools and equipment furnished by the Government.
  (3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
  (4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
  (5) The need for the type of service provided can reasonably be expected to last beyond one year.
  (6) The inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to -

    (i) Adequately protect the Government's interest;
    (ii) Retain control of the function involved; or
    (iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.
- Section 37.104(e) directs agencies to obtain the review and opinion of legal counsel when awarding a personal services contract.

5 U.S.C. § 3109 provides authority for federal agencies to hire by contract temporary services of consultants and experts, without regard to civil service rules, under certain circumstances established by OPM regulations.

- DFC is subject to section 3109 because it is an "agency" under section 3109(a)(1). See 5 U.S.C. § 5721 (defining "agency" to include an "Executive agency"); 5 U.S.C. § 105 (defining "Executive agency" to include a "Government corporation"); 5 U.S.C. § 103 (defining "Government corporation" as a corporation owned or controlled by the Government of the United States").

5 C.F.R. § 304.103 is the OPM regulation governing appointment of consultants and experts under 5 U.S.C. 3109.

- Section 304.103(b) specifies several instances where it is inappropriate to use section 3109: "An agency must not use 5 U.S.C. 3109 to appoint an expert or consultant…
    - "To do work performed by the agency's regular employees." Section 304.103(b)(4)
    - "Solely in anticipation of giving that individual a career appointment. However, subject to the conditions of this part, an agency may appoint an individual to an expert or consultant position pending Schedule C appointment or noncareer appointment in the Senior Executive Service." Section 304.103(b)(6)

Summary of the Law

- The FAR defines personal services contracts (PSCs) based on the facts and circumstances of the arrangement, not just the contract's terms, focusing on the Government's supervision and control over the contractor performing the contract.
- An agency violates the FAR and civil service laws if it awards a PSC without specific statutory authorization.
- 5 U.S.C. § 3109 provides statutory authority for agencies to hire the temporary services of consultants and experts by contract, without regard to civil service rules, under certain circumstances established by OPM regulations.
- 5 C.F.R. § 304.103 is the OPM regulation governing appointment of contractors under 5 U.S.C. § 3109.
- Section 304.103(b) specifically states that agencies cannot use section 3109 to appoint a contractor:
    - to do work performed by the agency's regular employees; or
    - solely in anticipation of giving that individual a career appointment.

Analysis

In March 2022, [redacted] was selected as a direct-hire for the position of [redacted] based in Washington, DC. For personal reasons, [redacted] was unwilling to enter on duty in Washington until summer 2023. [redacted] initiated, and DFC management facilitated, a request for [redacted] to work from [redacted] under an unsponsored DETO arrangement. When this request was denied by the State Department, [redacted] initiated, and DFC management facilitated, hiring [redacted] as a third-party contractor working remotely from [redacted]. [redacted] and DFC management went through these maneuvers notwithstanding that there were other qualified candidates who did not require such accommodations and that [redacted] start was delayed until [redacted] 2022.

[redacted] contract states that it is not a personal services contract (PSC). However, the facts belie this statement. [redacted] attended DFC employee onboarding. [redacted] official title under the contract is [redacted]. However, [redacted] performed many of the duties of [redacted], except for officially supervising employees and handling budgets. Indeed, [redacted] introduced [redacted] to [redacted] staff as [redacted]. [redacted] reported to [redacted] and served as [redacted] [redacted]. [redacted] even

chaired screening meetings and made decisions to move forward on investments. According to [redacted] and [redacted] staff, [redacted] was deeply involved in the substantive, day-to-day work of [redacted]. Thus, the facts demonstrate that [redacted] served as an integral part of the [redacted] team, in a senior decision-making role, on a day-to-day basis, and not as an outside consultant. Therefore, [redacted] was a *de facto* government employee, and [redacted] contract should be deemed a PSC under 48 C.F.R. §§ 2.101 and 37.104.

Like other federal agencies, DFC is authorized to retain professional services through PSCs under 5 U.S.C. § 3109 and 22 U.S.C. § 9632(a)(2). However, this authority is constrained by 5 C.F.R. § 304.103. Under section 304.103(b), federal agencies are specifically prohibited from using PSCs:

- "To do work performed by the agency's regular employees." Section 304.103(b)(4); or
- "Solely in anticipation of giving that individual a career appointment." Section 304.103(b)(6).

As discussed above, DFC hired [redacted] through a *de facto* PSC under which [redacted] performed the work of a senior staff member of [redacted]. Emails between [redacted] and OHRM clearly show that the intention from the beginning was to use the contract as a temporary mechanism and then convert [redacted] to a full-time hire in summer 2023. Tellingly, the contract even states that the position is for "temporary staffing." Therefore, DFC violated 5 C.F.R. § 304.103(b) and civil service rules when it used a third-party contract as a temporary staffing mechanism to hire [redacted] as *de facto* [redacted].

It is unclear whether DFC obtained the review and opinion of legal counsel required under 48 C.F.R. § 37.104(e) when it awarded [redacted] contract.

II.C. Improper Hiring Practices – Vetting of Prior Employment

Allegation

[redacted] was fired from [redacted] previous employer. DFC did not conduct a sufficient background check on [redacted]. [redacted] firing creates a reputational issue when dealing with other DFIs who pushed for [redacted] removal.

Facts

[redacted] and [redacted] two partners were terminated from their previous employer, [redacted], because investors were unsatisfied with [redacted] investment performance. [redacted] was not terminated based on any misconduct or on [redacted] individual performance. The CEO of the firm that took over management of [redacted] fund described [redacted] as a good person with honesty and integrity and said that [redacted] was the best of the three managers at [redacted] who were let go.

Analysis

The allegation is not supported by the evidence.

III. TRAVEL POLICY VIOLATIONS

Allegation

[redacted] frequently travelled to [redacted], where [redacted] lived. [redacted] rarely told staff in advance and rarely provided the required Delegation of Authority before leaving, which frequently left staff scrambling to find someone with appropriate signing authority. Staff were concerned that [redacted] used DFC funds to travel to [redacted] to see [redacted], using flimsy excuses of meetings in [redacted] that [redacted] easily could have done by video conference.

III.A. Use of Official Travel for Personal Benefit

OIG obtained copies of [redacted] Travel Vouchers and cross-referenced them against [redacted] Unofficial Foreign Travel requests. (EXHIBIT 14) The analysis disclosed that of the times [redacted] traveled outside the United States from October 2021 to December 2022, five were in connection with official business and six were for unofficial (i.e., personal) travel.

On December 21, 2022, [redacted] was interviewed by AIGI [redacted], DIG [redacted], and OIG Attorney [redacted]. (EXHIBIT 12)

> [redacted] said that [redacted] is [redacted], that [redacted] lives in [redacted], and that [redacted] visits [redacted] once per month. When asked how many times [redacted] visited [redacted] while on official foreign travel, [redacted] responded: "Once. We had an overlapping conference."
>
> AIGI [redacted] went through the itineraries for each of [redacted] official foreign trips in detail, working backwards from the present. [redacted] interactions with [redacted] on each trip, as disclosed during the interview, are summarized in **bold** below:
>
> > 11/27/2022-12/05/2022: Global Private Capital Association (GCPA) and European Bank of Reconstruction and Development (EBRD) meetings in [redacted]: [redacted] **was at the GCPA meeting.**
> >
> > 10/09/2022-10/15/2022: Global Impact Investing Conference (GIIC) training in [redacted]: [redacted] **came at the last minute.**
> >
> > 06/19/2022-06/24/2022: Went to the Three Seas Summit in [redacted], then on 06/22/2022 went to [redacted] for a British International Investment meeting: [redacted] **saw** [redacted] **in** [redacted].

04/30/2022-05/08/2022: Was on vacation in [redacted] when [redacted] got [redacted]. Began working from [redacted] hotel. On 05/08/2022-05/13/2022 went on travel status and attended a meeting. [redacted] **saw** [redacted] **for two days after** [redacted].

10/27/2021-11/17/2021: Went to [redacted] for meetings with BII, then on 10/30/2021-11/02/2021, went to [redacted] (NOTE: The travel voucher disclosed no associated lodging charges on 10/30/2021, and a travel arranger's note on the travel voucher stated: "*Traveler is not claiming lodging on Saturday, October 30 in* [redacted] *(wasn't on leave).* [redacted] *booked a hotel that* [redacted] *paid for on* [redacted] *personal funds.*"). 11/02/2021-11/04/2021: In [redacted] for the UN Climate Change Conference. 11/4/2021-11/7/2021: In [redacted]. [redacted] **saw** [redacted] **while** [redacted] **was in** [redacted].

[redacted] answers when confronted with detailed records of [redacted] travel show that [redacted] was not forthcoming when [redacted] initially said [redacted] met [redacted] only once while on official travel. In fact, [redacted] met [redacted] five times while on official travel. [redacted] initial answer that [redacted] met [redacted] once appears to be an attempt to minimize [redacted] contacts with [redacted] while on official travel.

Notwithstanding this minimization, [redacted] appears to have had business justifications for each trip, and DFC employees are not prohibited from visiting friends on personal time during official travel, provided they account for their time and expenses properly. However, the frequency with which [redacted] met [redacted] while on official travel (5 times in 14 months) gave the appearance to staff that [redacted] was using conferences and other meetings as a pretext to travel at DFC expense to see [redacted].

Thus, while it appears that [redacted] did not violate travel policy by visiting [redacted] during official travel, [redacted] nonetheless created an appearance of impropriety due to the frequency of these trips.

III.B. Work Performed During Unofficial Foreign Travel

OIG reviewed [redacted] Unofficial Foreign Travel Requests (UFTRs) for the times [redacted] traveled outside the U.S. on personal travel and cross-referenced them to [redacted] travel records and earnings and leave statements. In each of the UFTRs, [redacted] indicated that [redacted] was visiting or traveling with [redacted]. In 2022, [redacted] claimed 241.25 work hours while on unofficial foreign travel:

Location	Dates	Hours Claimed
[redacted]:	[redacted]	16 hours

[redacted]:	[redacted]	28.25 hours
[redacted]:	[redacted]	27 hours
[redacted]:	[redacted]	16 hours
	[redacted]	36 hours
[redacted]:	[redacted]	8 hours
[redacted]:	[redacted]	24 hours
[redacted]:	[redacted]	12 hours
[redacted]:	[redacted]	34 hours
	[redacted]	40 hours

The State Department's Foreign Affairs Manual and Foreign Affairs Handbook govern foreign travel for U.S. government executive branch employees. *See* 2 FAM 113.1.a ("The COM's [Chief of Mission's] authority encompasses not only the personnel of the Department of State, but rather all U.S. government executive branch activities, operations, and employees."); 2 FAH-2 H-112.1.a (The COM has "the authority to direct, supervise, and coordinate all U.S. Government executive branch employees in the COM's country or area of responsibility. This includes U.S. Direct Hire (USDH) employees and Personal Service Contractors (PSCs), whether assigned permanently or on temporary duty or an official visit."); 2 FAH-2 H-113.b ("Those persons subject to COM authority and agencies with personnel subject to COM authority have the following responsibilities.... (4) Request country clearance for any employee who will be in country on official business. The COM has the authority to grant, withhold, or limit country clearance.... Employees who will be in country for 364 days or less must request permission using eCountry Clearance.").

DFC Policy OA-HRM-002-2020 "Telework" (03/18/2020) recognizes these requirements and articulates them for DFC employees:

> VI(E)(4) Telework Overseas. The Chief of Mission (COM) has sole authority to determine if a Corporation employee may work overseas. Employees who do not meet the criteria below are prohibited from working while overseas, including while on personal overseas travel or non-workdays included in an overseas travel authorization. Permission to work overseas exists where:
>
> a) The employee is duty stationed overseas pursuant the requirements of the Foreign Assistance Act, including COM approval;
> b) The employee is on official overseas travel under an approved travel authorization; or
> c) The employee is under an approved Domestic Employee Telework Overseas (DETO) agreement and COM approval to work overseas has been obtained.

Thus, under State Department regulations and DFC policy, DFC employees are prohibited from working while overseas unless they are stationed, on approved TDY, or under a DETO in the foreign country – and have Country Clearance from the COM.

OIG reviewed post-specific information from the eCC system for each of the countries listed above. All of them require Country Clearance.

OIG contacted the Department of State, Bureau of Diplomatic Security regarding [redacted] visits to the countries listed above. None of the Regional Security Offices had a record of [redacted] receiving Country Clearance or a DETO authorization during the periods listed above.

Based on the foregoing, [redacted] violated State Department regulations and DFC policy by working more than 240 hours (equivalent to 30 days) while on personal foreign travel in 2022 without being in authorized travel status or having Country Clearance.

IV. CONFLICT OF INTEREST

Allegation

OIG received multiple allegations of conflicts of interest regarding [redacted] related to [redacted] pushing deals for friends, particularly for [redacted], an executive at [redacted], a global impact manager with whom DFC has an existing relationship and whose latest fund was in the early stages of evaluation by [redacted]. The complainants alleged that [redacted] applied explicit and implicit pressure on underwriters to use DFC capital to support funds managed by people with whom [redacted] has personal connections.

Facts

On December 1, 2022, OIG obtained [redacted] Unofficial Foreign Travel Requests (UFTRs) that [redacted] submitted to DFC Security. In each of the trips, [redacted] indicated [redacted] would be visiting/traveling with [redacted], who resides in [redacted]. (EXHIBIT 14)

On December 1, 2022, OIG obtained [redacted] profile from [redacted] website, which disclosed that [redacted] is [redacted]. (EXHIBIT 15)

On December 5, 2022, OIG reviewed an email dated December 28, 2021, in which [redacted] suggested to [redacted] subordinate, [redacted] "Why not consider debt for [redacted] as only other global fund (though ***I'm recused from this*** more it's a big fund, it's the product they have, we don't have a lot of global and probably will keep it that way)". (Emphasis added) (EXHIBIT 16)

On December 5, 2022, OIG reviewed a Disbursement Clearance request for $[redacted], dated October 5, 2022. In the email, [redacted] asked DFC Attorney [redacted] (cc'ing [redacted]), "***I'm recused from*** [redacted], I can redirect this to [redacted] does that work?" (Emphasis added) (EXHIBIT 17)

On December 5, 2022, OIG reviewed an email from [redacted], dated November 9, 2022, introducing [redacted] to [redacted] subordinates, [redacted]. (EXHIBIT 18)

On December 5, 2022, OIG reviewed a "Request for Clearance" memorandum dated November 28, 2022, which indicated [redacted] was seeking a new [redacted] investment from DFC. (EXHIBIT 19)

On December 6, 2022, OIG spoke via Teams videoconference with DFC Ethics Attorney [redacted] and Designated Agency Ethics Official [redacted]. DAEO [redacted] stated that although [redacted] suggested that [redacted] recuse [redacted] from deals involving [redacted] partner for appearances, [redacted] was not actually required to do so under conflict-of-interest rules unless [redacted] and [redacted] were cohabitating.

On January 13, 2023, [redacted] chaired a Screening Meeting for approval of a [redacted] investment in [redacted]. [redacted] decided to advance the deal to due diligence. (EXHIBIT 13)

On May 5, 2023, CEO Nathan approved a Decision/Action Memorandum to allow certain Review countries to be included in the list of Eligible Countries for the (now) [redacted] investment in the [redacted] Fund. (EXHIBIT 20)

Analysis

OIG received multiple complaints from [redacted] staff regarding the number of times [redacted] met with [redacted], who was an [redacted] at [redacted], using official travel (5 times in 14 months, as detailed above). These staff members were concerned that [redacted] relationship with [redacted] created a conflict of interest.

[redacted] properly sought ethics advice on the potential conflict of interest. DFC's ethics officials reasonably concluded that [redacted] relationship was not a covered relationship under applicable conflict-of-interest rules. Nonetheless, they advised [redacted] to recuse [redacted] to avoid the appearance of a conflict of interest.

[redacted] initially followed the ethics advice [redacted] received and informed [redacted] staff that [redacted] was recused from the [redacted] deal. OIG's investigation did not reveal any evidence that [redacted] took official action regarding the [redacted] deal. Thus, the investigation did not reveal any evidence of an actual conflict of interest involving [redacted] and [redacted].

However, although [redacted] told [redacted] staff that [redacted] was recused from [redacted], [redacted] continued to discuss the deal with staff and on at least one occasion appeared to advocate for it. Thus, [redacted] gave staff the impression that [redacted] was not fully recused and was attempting to facilitate the deal "behind the scenes." This created the appearance of a conflict of interest.

Given the sensitivity in Congress and among stakeholders regarding conflicts of interest, any actions by a senior DFC official that create even the appearance of a conflict of interest should be of concern to DFC management and its Board of Directors. In this case, [redacted] relationship with [redacted] combined with [redacted] continued involvement with the deal created such an appearance.

SUMMARY OF FINDINGS

I. WHISTLEBLOWER REPRISAL

Based on OSC's investigation, the allegation of whistleblower reprisal is substantiated.

OSC's investigation revealed that the whistleblower likely has a *prima facie* case of whistleblower reprisal, and that it is unlikely that DFC can rebut this case by showing that it would have taken the same personnel actions in the absence of the whistleblower's disclosure. Accordingly, OSC proposed a variety of potential corrective actions that DFC should consider taking.

In addition, OSC found that [redacted] created a hostile work environment. OSC found that: (1) [redacted] angered or scared [redacted] staff in [redacted], even staff whom [redacted] viewed as supporters; (2) [redacted] was perceived within [redacted] as condescending and dismissive with explosive anger, often expressed publicly, and as someone who bears grudges; and (3) [redacted] prevented and intended to continue to prevent the whistleblower from obtaining employment in [redacted] sphere of influence outside DFC.

II. IMPROPER HIRING PRACTICES

II.A. Waiver of Security Clearance Requirements

DFC failed to comply with 5 C.F.R. § 1400.202 when it waived [redacted] pre-appointment security investigation.

[redacted] was selected for a position that was advertised as a ***Critical-Sensitive (CS)/High Risk*** position requiring a ***Top Secret security clearance***, and later reclassified as requiring a ***Secret security clearance***. After [redacted] was selected, [redacted] was unable to get an interim Secret security clearance. [redacted] and DFC waived [redacted] pre-appointment investigation using a form for ***Noncritical-Sensitive*** positions.

DFC has no records justifying the downgrade of [redacted] position from Critical-Sensitive to Noncritical-Sensitive, as required by 5 C.F.R. § 1400.202. DFC did not document the nature of the emergency or the national interest justifying the waiver. Thus, DFC failed to comply with 5 C.F.R. § 1400.202 when it waived [redacted] pre-appointment security investigation.

Further, given the prior relationship between [redacted] and [redacted] and the considerable lengths to which [redacted] went to hire [redacted], the waiver of pre-appointment investigative requirements for [redacted] has the appearance of impropriety (i.e., favoritism over security interests).

II.B. Use of Third-Party Contract

DFC violated 5 C.F.R. § 304.103(b) and civil service rules when it used a third-party contract as a temporary staffing mechanism to hire [redacted] as *de facto* [redacted].

In March 2022, [redacted] was selected as a direct-hire for the position of [redacted] based in Washington, DC. For personal reasons, [redacted] was unwilling to enter on duty in Washington until summer 2023. [redacted] initiated, and DFC management facilitated, a request for [redacted] to work from [redacted] under an unsponsored DETO arrangement. When this request was denied by the State Department, [redacted] initiated, and DFC management facilitated, hiring [redacted] as a third-party contractor working remotely from [redacted].

[redacted] contract states that it is not a personal services contract (PSC). However, the facts belie this statement. [redacted] attended DFC employee onboarding. [redacted] performed many of the duties of [redacted], except for officially supervising employees and handling budgets. [redacted] introduced [redacted] to [redacted] staff as [redacted]. [redacted] reported to [redacted] and served as [redacted]. [redacted] even chaired screening meetings and made decisions to move forward on investments. According to [redacted] and [redacted] staff, [redacted] was deeply involved in the substantive, day-to-day work of [redacted]. Thus, the facts demonstrate that [redacted] served as an integral part of the [redacted] team, in a senior decision-making role, on a day-to-day basis, and not as an outside consultant. Therefore, [redacted] was a *de facto* government employee, and [redacted] contract should be deemed a PSC under 48 C.F.R. §§ 2.101 and 37.104.

Emails between [redacted] and OHRM clearly show that the intention from the beginning was to use the contract as a temporary mechanism and then convert [redacted] to a full-time hire in summer 2023. Tellingly, the contract even states that the position is for "temporary staffing." Therefore, DFC violated 5 C.F.R. § 304.103(b) and civil service rules when it used a third-party contract as a temporary staffing mechanism to hire [redacted] as *de facto* [redacted].

It is unclear whether DFC obtained the review and opinion of legal counsel required under 48 C.F.R. § 37.104(e) when it awarded [redacted] contract.

II.C. Vetting of Prior Employment

The allegations that [redacted] was fired from [redacted] previous employer and that DFC did not conduct a sufficient background check on [redacted] are **not supported by the evidence.**

III. TRAVEL POLICY VIOLATIONS

[redacted] violated State Department regulations and DFC policy by working more than 240 hours while on personal foreign travel in 2022 without being in an authorized travel status or having Country Clearance.

In violation of State Department regulations and DFC policy, [redacted] worked more than 240 hours (equivalent to 30 days) while on personal foreign travel in 2022 without being in an authorized travel status (i.e., being stationed, on approved TDY, or under a DETO) and without Country Clearance from the COM.

[redacted] does not appear to have violated federal or DFC travel policies by visiting [redacted] during official travel. However, [redacted] created an appearance of impropriety due to the frequency of these trips.

IV. CONFLICT OF INTEREST

[redacted] created the appearance of a conflict of interest among [redacted] staff by stating that [redacted] was recused from the [redacted] deal while continuing to discuss the deal with staff and appearing to advocate for it.

[redacted] properly sought ethics advice on the potential conflict of interest that arose because [redacted] was an investment partner at [redacted], a DFC client. DFC's ethics officials reasonably concluded that [redacted] relationship was not a covered relationship under applicable conflict-of-interest rules. Nonetheless, they advised [redacted] to recuse [redacted] to avoid the appearance of a conflict of interest.

[redacted] initially followed this advice and informed [redacted] staff that [redacted] was recused from the [redacted] deal. OIG's investigation did not reveal any evidence that [redacted] took official action regarding the [redacted] deal. Thus, the investigation did not reveal any evidence of an *actual* conflict of interest involving [redacted] and [redacted].

However, despite telling [redacted] staff that [redacted] was recused from [redacted], [redacted] continued to discuss the deal with staff and on at least one occasion appeared to advocate for it. Thus, [redacted] gave staff the impression that [redacted] was not fully recused and was attempting to facilitate the deal "behind the scenes." This created the *appearance* of a conflict of interest.

[redacted]
Assistant Inspector General for Investigations