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

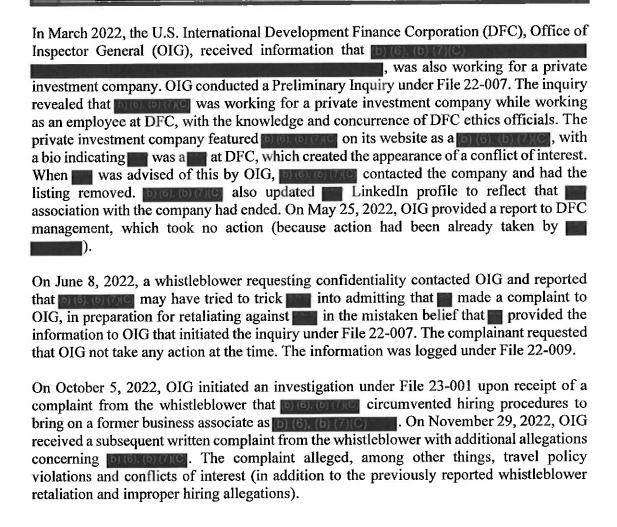


## REPORT OF INVESTIGATION

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

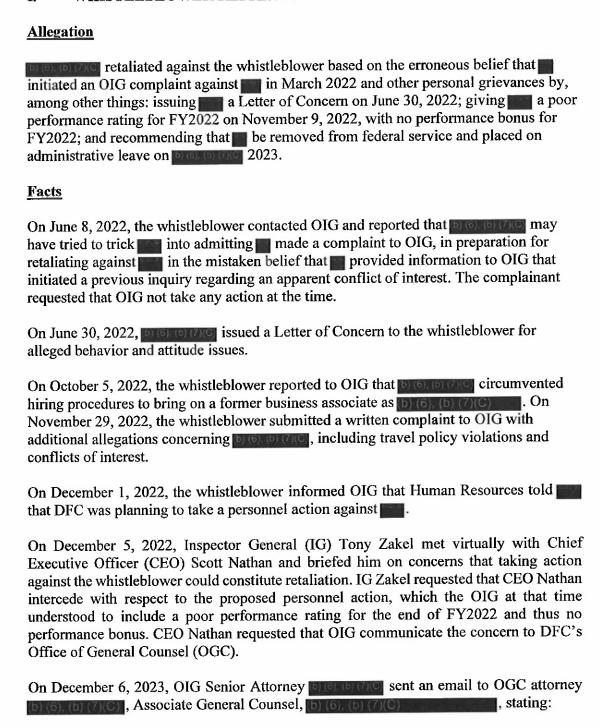
23-001-I ♦ September 2023

## Introduction



## **INVESTIGATIVE ACTIVITY**

### I. WHISTLEBLOWER REPRISAL



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 (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 office, served with a letter recommending removal from federal service, and placed on administrative leave.

On January 23, 2023, OIG contacted the Office of Special Counsel (OSC)<sup>1</sup> 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 met with CEO Nathan and VP/General Counsel (a) (6) (b) (7) (c) to let them know that, based on the whistleblower's report that 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 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 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 asserted that the email from OIG Attorney to OGC Attorney 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 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.

<sup>&</sup>lt;sup>1</sup> 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 until we issue our report into the allegations of whistleblower retaliation against

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.

resigned from federal service, effective of the property of th

On February 14, 2023, IG Zakel and DIG met virtually with CEO Nathan and VP 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 processor.

On 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. § 1221(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.

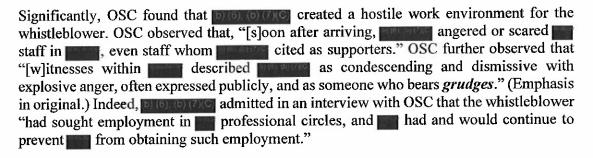
Under the Title 5 rubric, if the employee presents evidence that it is more likely than not that all three requirements are present, the agency can still prevail by establishing by *clear* and convincing evidence that it would have taken the same action absent the protected disclosure or activity. Clear 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.

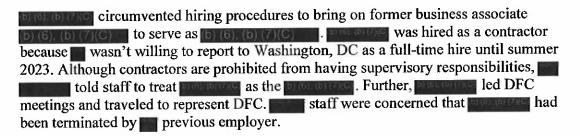
OSC preliminarily found it likely that the whistleblower has a prima facie case of whistleblower reprisal. This represents a finding by a preponderance of the evidence: that the whistleblower made a protected disclosure; that the retaliating official (but the likely that knowledge of the protected disclosure; 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.



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

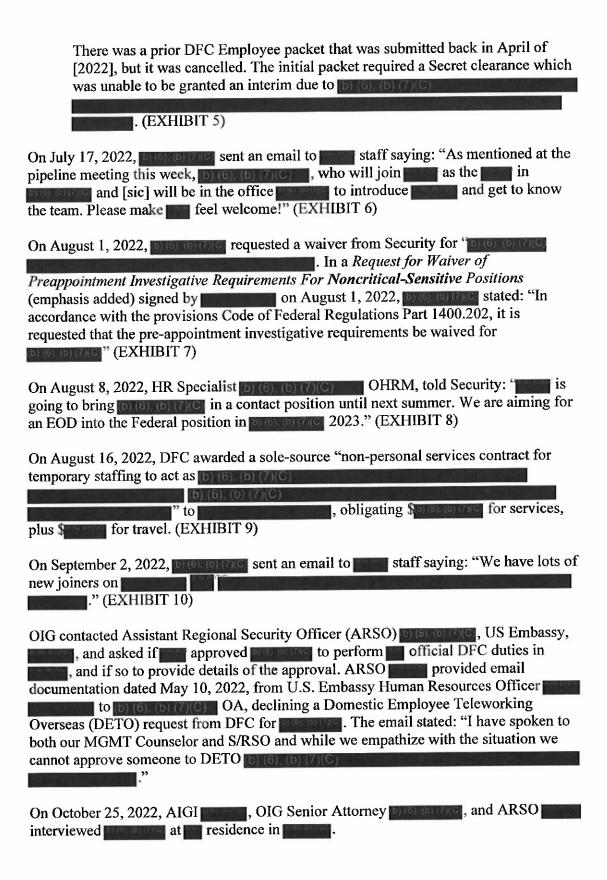
#### II. IMPROPER HIRING PRACTICES

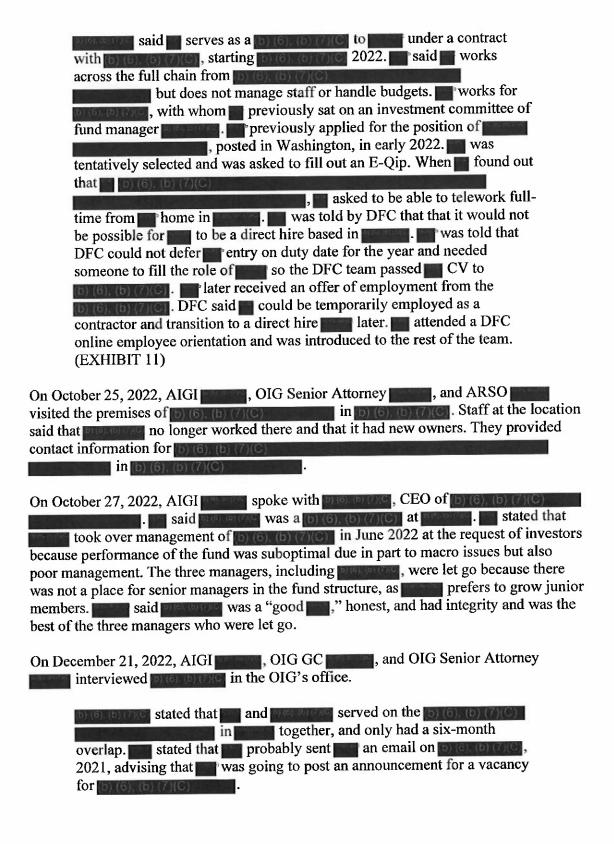
#### Allegation

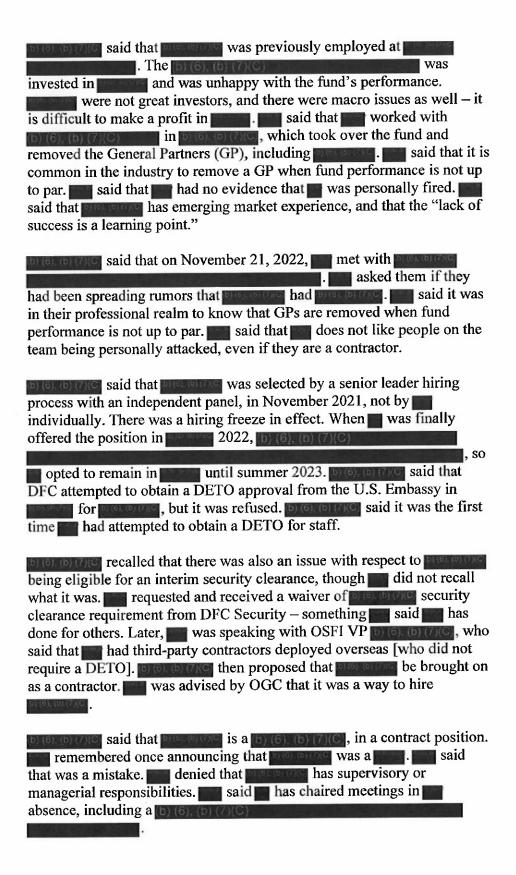


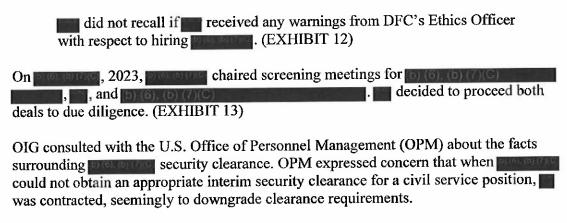
## **Facts**

On sent an email to Gmail account regarding a job announcement for a position in saying: "I didn't see your name in the first cut, so thought I'd ask. I'm also going to post position (for which I can also pull folks from the head of late next week if time zones easier. "I late next week if time zones easier. "I late next was interested in the position, and they made arrangements to speak. (EXHIBIT 1)
On December 22, 2021, sent an email to with a link to the job announcement. (EXHIBIT 2)
The announcement, which was for a (b) (6) (b) (7)(C), stated:
(b) (6), (b) (7)(C)
The position sensitivity/risk was determined to be "Critical-Sensitive (CS)/High Risk." The announcement stated: "Must be able to obtain and maintain a <i>Top Secret security clearance</i> ." (Emphasis added.)
The location of the position was Washington, DC. (EXHIBIT 3)
On December 21, 2021, on the signed a Position Designation Record stating that the position required a <i>Secret security clearance</i> . (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. The property of the prope
On May 23, 2022, DFC Security declined to issue an interim security clearance to pending completion of full background investigation. DFC Director of Security (b) (6), (b) (7) (C) stated:
is currently employed as a contractor working remotely as a as of 09/12/2022. current position only requires









## 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 <u>Critical-Sensitive</u> 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 <u>Noncritical-Sensitive</u> 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 was selected for was advertised as a Critical-Sensitive
(CS)/High Risk position requiring a Top Secret security clearance. Before
was selected, signed a Position Designation Record that classified the
position as requiring a Secret security clearance. After was selected, DFC
Security declined to issue an interim Secret security clearance due to
because of (b) (6), (b) (7)(C)
. DFC prepared a waiver for second using a Request for Waiver of
Preappointment Investigative Requirements For Noncritical-Sensitive Positions.
position on the waiver form was listed as (b) (6), (b) (7)(C)
signed the waiver form on August 1, 2022.
OIG requested any records justifying the downgrade of 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
pre-appointment security investigation.
1.1
Further, given the prior relationship between and and and the
considerable lengths to which went to hire waiver of pre-
appointment investigative requirements for has the appearance of impropriety

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

(i.e., favoritism over security interests).

#### 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.
  - o 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").

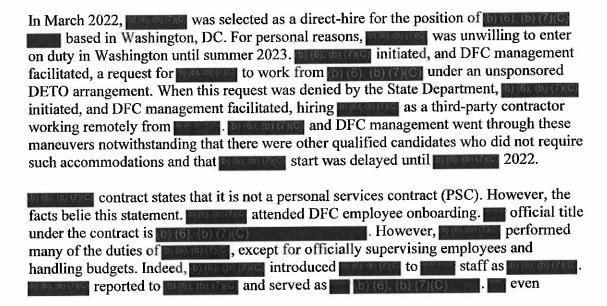
5 C.F.R. § 304.103 is the OPM regulation governing appointment of consultants and experts under 5 U.S.C. 3109.

- 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...
  - o "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:
  - o to do work performed by the agency's regular employees; or
  - o solely in anticipation of giving that individual a career appointment.

### **Analysis**



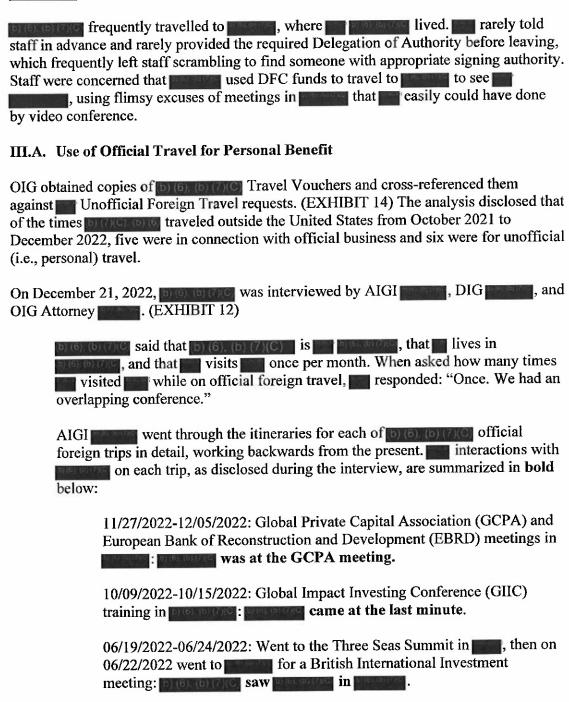
chaired screening meetings and made decisions to move forward on investments. According to and staff, was deeply involved in the substantive, day-to-day work of team, in a senior decision-making role, on a day-to-day basis, and not as an outside consultant. Therefore, was a de facto government employee, and 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 through a de facto PSC under which performed the work of a senior staff member of Emails between of the contract as a temporary mechanism and then convert 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 as de facto to the factor of the factor
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 contract.
II.C. Improper Hiring Practices – Vetting of Prior Employment
Allegation
was fired from previous employer. DFC did not conduct a sufficient background check on firing creates a reputational issue when dealing with other DFIs who pushed for removal.
<u>Facts</u>
and two partners were terminated from their previous employer, because investors were unsatisfied with investment performance. was not terminated based on any misconduct or on individual performance. The CEO of the firm that took over management of fund described as a good person with honesty and integrity and said that was the best of the three managers at who were let go.

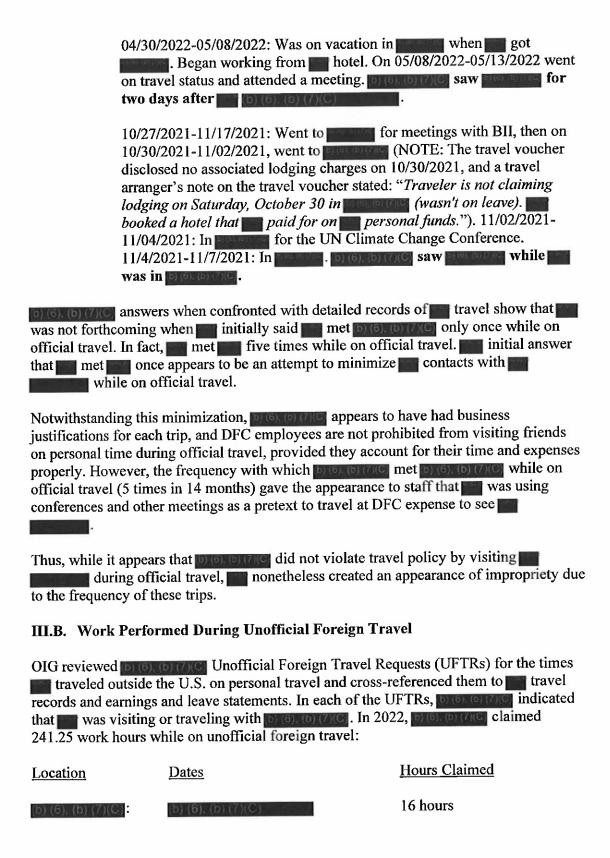
### Analysis

The allegation is not supported by the evidence.

#### III. TRAVEL POLICY VIOLATIONS

### **Allegation**





28.25 hours

27 hours

27 hours

28 hours

28 hours

28 hours

27 hours

28 hours

28 hours

28 hours

36 hours

36 hours

37 hours

37 hours

38 hours

49 hours

38 hours

39 hours

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:

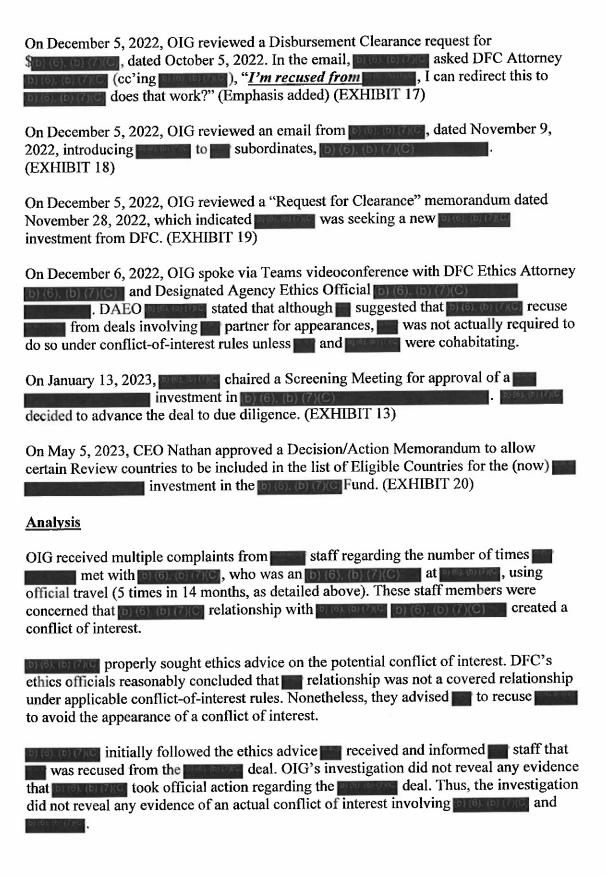
VI(E)(4) Telework Overseas. The Chief of Mission (COM) has sole authority to determine if a Corporation employee may work overseas. Employees who do not meet the criteria below are prohibited from working while overseas, including while on personal overseas travel or non-workdays included in an overseas travel authorization. Permission to work overseas exists where:

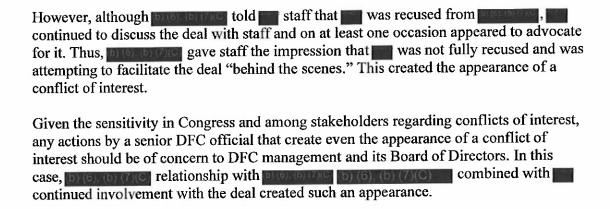
- a) The employee is duty stationed overseas pursuant the requirements of the Foreign Assistance Act, including COM approval;
- b) The employee is on official overseas travel under an approved travel authorization; or
- c) The employee is under an approved Domestic Employee Telework Overseas (DETO) agreement 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 visits to the countries listed above. None of the Regional Security Offices had a record of properties receiving Country Clearance or a DETO authorization during the periods listed above. Based on the foregoing, by the 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. CONFLICT OF INTEREST IV. Allegation OIG received multiple allegations of conflicts of interest regarding of conflicts of confl pushing deals for friends, particularly for property an executive at a global impact manager with whom DFC has an existing relationship and whose latest fund was in the early stages of evaluation by \_\_\_\_\_. The complainants alleged that by the latter applied explicit and implicit pressure on underwriters to use DFC capital to support funds managed by people with whom has personal connections. **Facts** On December 1, 2022, OIG obtained to 16 to 16 Unofficial Foreign Travel Requests (UFTRs) that submitted to DFC Security. In each of the trips, indicated would be visiting/traveling with (b) (6) (7) (C) who resides in (b) (6) (b) (7) (C) . (EXHIBIT 14) On December 1, 2022, OIG obtained profile from (6), (6), (7) website, which disclosed that is is is in the latest that it is in the . (EXHIBIT 15) On December 5, 2022, OIG reviewed an email dated December 28, 2021, in which suggested to subordinate, by 63 (b) (7)(C) "Why not consider debt for 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)





# **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 the created a hostile work environment. OSC found that: (1) the continued angered or scared staff in the continued as supporters; (2) the continued was perceived within as condescending and dismissive with explosive anger, often expressed publicly, and as someone who bears grudges; and (3) the continued prevented and intended to continue to prevent the whistleblower from obtaining employment in 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 (b) (6) (7) (7) (7) (7) (8) pre-appointment security investigation.

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 was selected, was unable to get an interim Secret security clearance. and DFC waived pre-appointment investigation using a form for Noncritical-Sensitive positions.

DFC has no records justifying the downgrade of 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 pre-appointment security investigation.

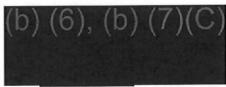
Further, given the prior relationship between and and and the considerable lengths to which went to hire went to hire appointment investigative requirements for has the appearance of impropriety (i.e., favoritism over security interests).

## 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 (b) (6) (7)(C) as de facto
In March 2022, was selected as a direct-hire for the position of based in Washington, DC. For personal reasons, was unwilling to enter on duty in Washington until summer 2023. initiated, and DFC management facilitated, a request for to work from to work from the contract of a reasons. When this request was denied by the State Department, initiated, and DFC management facilitated, hiring as a third-party contractor working remotely from the contractor
contract states that it is not a personal services contract (PSC). However, the facts belie this statement. The attended DFC employee onboarding. The performed many of the duties of th
Emails between and OHRM clearly show that the intention from the beginning was to use the contract as a temporary mechanism and then convert 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
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 contract.
II.C. Vetting of Prior Employment
The allegations that (b) (7)(C) was fired from previous employer and that DFC did not conduct a sufficient background check on are not supported by the evidence.

### III. TRAVEL POLICY VIOLATIONS

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, state 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. does not appear to have violated federal or DFC travel policies by visiting during official travel. However, created an appearance of impropriety due to the frequency of these trips. CONFLICT OF INTEREST IV. oreated the appearance of a conflict of interest among staff by stating that was recused from the bibliographic deal while continuing to discuss the deal with staff and appearing to advocate for it. properly sought ethics advice on the potential conflict of interest that arose because b) (6) (6) (7) (7) was an investment partner at properties, a DFC client. DFC's ethics officials reasonably concluded that relationship was not a covered relationship under applicable conflict-of-interest rules. Nonetheless, they advised to recuse to avoid the appearance of a conflict of interest. initially followed this advice and informed staff that was recused from the deal. OIG's investigation did not reveal any evidence that took official action regarding the deal. Thus, the investigation did not reveal any evidence of an actual conflict of interest involving [1] (6) (6) (7) (2) and However, despite telling staff that was recused from was recused from staff that staff that was recused from staff that staff continued to discuss the deal with staff and on at least one occasion appeared to advocate for it. Thus, gave staff the impression that was not fully recused and was attempting to facilitate the deal "behind the scenes." This created the appearance of a conflict of interest.



**Assistant Inspector General for Investigations**