

February 26, 2024

DFC Reaffirms Commitment to Employee Protection and Whistleblower Rights

The U.S. International Development Finance Corporation (DFC) is committed to sustaining a workplace that safeguards whistleblower rights and protects employees from any form of retaliation.

DFC has taken several actions affirming our responsibility to our employees to provide a positive work environment that allows each employee to contribute to their fullest extent to the mission of the organization. These actions include:

- Posting information on whistleblower protections and complaint mechanisms throughout DFC common areas;
- Providing materials on whistleblower protections and complaint mechanisms to all employees during new employee orientation;
- Establishing a new intranet page that provides DFC employees with easily accessible information on reporting whistleblower retaliation;
- Issuing a memorandum to all employees on “Whistleblower Protection and Prohibited Personnel Practices,” which highlighted informational resources and protections for whistleblowers;
- Assigning all supervisors annual training on whistleblower protection rights and tracking compliance through DFC’s learning management system; and
- Receiving full certification under the Office of Special Counsel (OSC)’s 2302(c) Certification Program, which allows federal agencies to meet the statutory obligation to inform their workforces about the rights and remedies available to them under the Civil Service Reform Act, the Whistleblower Protection Act, the Whistleblower Protection Enhancement Act, and the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.

We also value the work and role of the Office of Inspector General (OIG) in providing independent oversight over allegations of retaliation and upholding these protections. In September 2023, the OIG provided a Report of Investigation on alleged misconduct by a senior executive who is no longer employed by DFC. While we had some general observations and areas of disagreement on process outlined in our enclosed response, we appreciated the productive engagement with the OIG throughout their investigation and have worked to address issues raised in the report.

Following the OIG's report, DFC has worked to further reinforce its efforts to promote a culture where whistleblower retaliation is not tolerated. That includes taking the following actions in 2024:

- Inviting the OIG to provide senior leadership briefings on whistleblower rights, protections, resources, and expectations;
- Requesting OSC to deliver live, interactive whistleblower training for DFC supervisors; and
- Ramping up regular communications to all DFC staff reiterating that retaliation in any form is not tolerated and reminding staff of resources available to them.

DFC looks forward to continued collaboration with staff, the OIG, and all relevant stakeholders to ensure that DFC maintains a work environment free from retaliation.

The following enclosed document is a formal, detailed memorandum to the OIG outlining the agency management response to the published report findings.

DATE: December 11, 2023
TO: Anthony Zakel, Inspector General (b) (6)
FROM: (b) (6), Vice President and General Counsel (b) (6)
SUBJECT: Report of Investigation 23-001 of September 29, 2023 (the "ROI")

DFC greatly values the work of the OIG and carefully considered all findings described in the subject ROI. This memo summarizes DFC management's response to the ROI and some specific steps that DFC intends to take in connection with this matter. In the interest of protecting the identity of the whistleblower, and others whose personal matters are discussed therein, we have anonymized the different parties in our response.

General Observations:

Federal employees have the right to be free from prohibited personnel practices, including retaliation for whistleblowing. DFC is committed to making sure that all employees are aware of their rights as well as the safeguards that are in place to protect them. DFC takes allegations of reprisal very seriously, and it is DFC's policy to strictly prohibit reprisal for whistleblowing activity. We also recognize that to achieve DFC's mission with excellence, we must operate in a climate of respect and professionalism, and in an environment that enables managers to take legitimate action to address performance deficiencies.

DFC management appreciates the complexity of the investigation undertaken by OIG with respect to alleged improper hiring practices, travel policy violations, and conflicts of interest by a former senior executive who left DFC during the investigation, as well as the investigation by the Office of Special Counsel (OSC) concerning alleged whistleblower retaliation by the former senior executive.

In connection with these matters, DFC management considered the information in the ROI for lessons learned and potential measures to take, including (b) (5)

(b) (5). In addition, corrective or other measures related to the alleged whistleblower retaliation may flow from OSC's investigation.

However, in the interest of a balanced understanding of these matters, as befits an impartial investigation, DFC management notes the following:

I. Allegation of Whistleblower Retaliation:


As discussed more fully below, DFC management deems OIG's substantiation of the allegation of whistleblower retaliation in reliance on the OSC's *preliminary* findings, and the publishing of this finding of substantiation before OSC's investigation has concluded, to be premature and prejudicial for DFC. In addition, DFC management believes the ROI failed to include material information that was needed to present a complete account of the events.

- To present a complete account of material facts, the ROI should have included DFC's responses to different OIG communications. For example:
 - The ROI describes a December 6, 2022, communication from OIG's (b) (6) to a DFC attorney, (b) (6) requesting a 'stay' on a proposed adverse personnel action concerning the whistleblower, as the proposed action was alleged to be in retaliation for

protected disclosure. In that email (b) (6) also requested certain records from the whistleblower's personnel file. The ROI materially omits (b) (6) December 19, 2022, response to (b) (6), transmitting the requested records, inquiring about the timeline for OIG's investigation, and indicating concern about stopping a personnel matter that had been ongoing for a while, was sufficiently documented and for which the institution had no evidence of retaliation. On December 19, 2022, (b) (6) replied indicating that OIG's investigation would continue for weeks or perhaps a couple of months and indicating further that "If the proposed action is readily reversible, then you could take the action with the understanding that it might later need to be reversed based on the outcome of our investigation."

- The ROI further describes a letter from IG Zakel to DFC's CEO on January 24, 2023, formally requesting a 'stay' on any pending or planned personnel actions against the whistleblower. The ROI materially omits the CEO's January 26, 2023, response, whereby the CEO requested clarification from the OIG:

(b) (5)

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- We note that OIG never responded to the CEO's January 26, 2023, letter, a fact that should have been included in the ROI.
- The ROI includes a summary of the January 23, 2023, meeting with the Inspector General, Deputy Inspector General and DFC's CEO and General Counsel (p.4), which inaccurately attributes certain statements to DFC's General Counsel and makes material omissions, as follows:
 - VP (b) (6) was not aware of any specific date(s) on which the whistleblower had approached OIG, therefore, any references to statements by VP (b) (6) incorporating such dates are inaccurate.
 - VP (b) (6) referenced the December 19, 2022, email from (b) (6) to (b) (6) where (b) explicitly stated that "(...) we do not know what action DFC proposes to take. If you are confident that the proposed action could not be deemed retaliatory and is well grounded, then there is no reason to delay it." VP (b) (6) referenced that communication to clarify that the proposed (b) (6) was not an escalation but rather the notification of the

same personnel action that (b) (6) and (b) (6) had corresponded about weeks prior.

- VP (b) (6) did not, and would not, assert that DFC could take “whatever action it deemed appropriate as long as it had the benefit of OGC’s counsel.”
- To present a complete account of material facts, the ROI should have included a description of the process DFC followed with respect to the proposed (b) (6):
 - Before the whistleblower was notified of their proposed (b) (6) reasons on January 19, 2023, the proposal had undergone a technical review for sufficiency and no evidence of retaliation was detected. Per DFC’s Discipline and Adverse Actions Policy, a process was followed whereby a deciding official was designated to consider whether to sustain the proposal and the whistleblower was given the opportunity to respond to the proposed action.
 - The deciding official was presented with the proposal and the response, and they did not sustain the proposed (b) (6). The whistleblower was returned from administrative leave to their previous position more than three months before OIG concluded its investigation and issued the ROI.
 - Through the process, DFC management took careful steps to ensure that the deciding official was not aware of the ongoing OIG and OSC investigations to preserve the integrity of the personnel action and the confidentiality of the whistleblower. DFC’s internal processes worked as intended, a fact that unfortunately was not mentioned in the ROI.
- In February 2023, OIG and OSC had agreed that OIG would suspend its investigation of the whistleblower retaliation claim to allow OSC to carry out an independent investigation of said claim (p. 5 of the ROI). (b) (5)
- At OIG’s request and based on OIG’s assurances, DFC shared OSC’s *preliminary* findings with OIG for fact-checking purposes; however, in the ROI OIG indicates that “Based on OSC’s investigation, the allegation of whistleblower reprisal is substantiated” (p. 24 of the ROI). A summary of this finding, including details from OSC’s *preliminary* findings, was included in OIG’s Semi-Annual Report to Congress (SARC) published in November 2023. DFC management deems OIG’s substantiation in reliance on the OSC’s *preliminary* findings, and the publishing of this finding of substantiation before OSC’s investigation has concluded, to be premature and prejudicial for DFC.
 - Indeed, the SARC cites a line from OSC’s preliminary memo to the effect that the former senior executive created a “hostile work environment” in the whistleblower’s department, a statement that was extraneous to OIGs investigation.
- Given the small size of the agency, DFC management is concerned the level of detail included in the SARC compromises the anonymity of the whistleblower and could potentially influence a determination of liability for the agency. The same can be said about the ROI, which unfortunately includes unnecessary details of the personal lives of DFC staff and external parties.
- DFC understands OSC’s investigation has not been finalized. DFC remains engaged with OSC’s investigation of the whistleblower reprisal claim and (b) (5)

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II. Allegation of Improper Hiring Practices

As discussed more fully below, DFC never waived the candidate's pre-appointment security investigation and DFC management disagrees with OIG's finding that DFC failed to comply with 5 C.F.R. § 1400.202. Moreover, DFC management disagrees with OIG's finding that DFC violated 5 C.F.R. § 304.103(b) and civil service rules when it legitimately obtained third-party contracting services under the Small Business Administration's 8(a) program, and also disagrees that the candidate was a *de facto* PSC or government employee.

- We note a material omission with respect to the description of the selection process in p. 9 of the ROI: the process to fill the senior-level position described therein was not carried out by a single selecting official but rather by a selection panel, as confirmed by the hiring official in an interview with OIG.
- We note a material omission in p. 10 of the ROI: DFC management understands that AIGI (b) (6) and others appeared unannounced at the candidate's (b) (6) residence.

A. Waiver of Security Clearance Requirements:

- We note material omissions with respect to the waiver of the security clearance requirement for the senior-level position in pgs. 9-13 of the ROI:
 - Upon the candidate's acceptance of the tentative job offer, the suitability and security clearance investigations were initiated in accordance with DFC policy. After the candidate failed to obtain an *interim* security clearance, the former senior executive, who was the hiring official, signed a request for waiver to allow the candidate to onboard pending final adjudication of the security clearance, but DFC security never processed nor granted the waiver. Subsequently, the candidate began working for a DFC third-party contractor performing services that do not require the higher-level security clearance of a DFC employee.
 - The candidate was ultimately adjudicated a "Secret" security clearance based upon the *final* results of (b) Tier III investigation.
- We note that the candidate's scope of work for the third-party contractor is consistent with the contract requirements and DFC security clearance requirements.

(b) (5)

B. Use of Third-Party Contract:

- We note that the third-party contractor vetted candidates and determined the best qualified candidate for the specific contract. While DFC confirmed the technical suitability of the chosen candidate, the third-party contractor ultimately selected and hired the candidate.
- The contract request was for third-party contractor services, not for personal services under 48 C.F.R. § 37.104. These services were procured as a set-aside under the Small Business Administration's 8(a) program, pursuant to which the Small Business Administration (SBA) vets third party contracting opportunities before allowing them into the program. Per the terms of the program, the SBA reviewed the statement of work and general acquisition strategy and agreed with DFC's assessment that this specific procurement met the general third-party contractor definition for services under the 8(a) program.
- DFC management does not agree that the candidate was a *de facto* PSC. While it was inappropriate for the former senior executive to refer to the candidate as if they were performing services other than under a contractual arrangement between DFC and the third-party contractor, the record provided by OIG does not demonstrate how the candidate served in a senior decision-making role and as a *de-facto* employee while performing services under a third-party contract.

(b) (5)

III. Allegation of Travel Policy Violations

Work Performed on Personal Time While on Foreign Travel

DFC management does not agree with OIG's finding that the senior executive violated State Department Regulations and DFC policy by working more than 240 hours while on personal travel overseas in 2022. We refer to OPM's guidance on 'mobile work' as included in OPM's [Overseas Telework](#) webpage:

"Overseas telework that requires a DETO agreement is distinct from mobile work, which can encompass a range of scenarios. For example, an employee who is overseas on leave may check his or her work email, touch base with a supervisor, call into a meeting, or log into a work account to accomplish a discrete task such as clearing a document. This would be considered performing mobile work and not telework. In addition, an employee who is overseas on a TDY assignment might log in and attend to some of his or her domestic work while overseas. This would also be considered mobile work. The State Department understands that an employee on leave or on TDY travel overseas sometimes conducts brief spates of mobile work, and this type of work does not require a DETO agreement."

In response to the ROI, DFC confirmed the continued applicability of this statement with the State Department's Office of Employee Relations, Bureau of Global Talent Management (office responsible for DETO policy). They rely on agencies to use their best judgment regarding the definition of mobile work.

DFC staff are highly dedicated individuals who sometimes need to respond in real time to nascent issues, working beyond their official schedule and regardless of location, to keep up with the fast pace and high stakes nature of the international financial transactions that DFC carries out. As a business leader, the senior executive would have had a range of work demands which would have been appropriate to address as mobile work on personal leave overseas.

(b) (5)

IV. Allegations of Conflict of Interest

OIG's investigation found evidence of the appearance of a conflict of interest by the former senior executive with respect to a close personal contact, despite DFC's ethics experts having determined that the contact in question is not in a covered relationship with the senior official under applicable ethics rules. This is a case of staff doing the right thing: maintaining awareness of their role and proactively seeking and following ethics advice. DFC management is concerned about the potential chilling effect on staff of OIG's conclusion that an appearance of a conflict of interest existed, despite the fact this is not a covered relationship, and despite the former senior executive acting pursuant to ethics advice.

(b) (5)



As previously stated, it is DFC's policy to strictly prohibit reprisal for whistleblowing activity and it takes allegations of reprisal very seriously. DFC is committed to making sure that all employees are aware of whistleblower rights as well as the safeguards that are in place to protect them.

DFC management appreciates the complexity of the investigation undertaken by OIG with respect to alleged improper hiring practices, travel policy violations, and conflicts of interest by a former senior executive and thanks OIG for its continued commitment to promoting accountability and transparency both within and outside of DFC. We look forward to working together to ensure that DFC continues to deliver on its mission.