



**REVISED**

# An Investigation of Alleged Misconduct by Former Special Agent in Charge

(b)(6); (b)(7)(C)



**February 2024**

## I. Introduction

This report summarizes the Department of Justice (DOJ) Office of the Inspector General's (OIG) investigation into a complaint alleging misconduct by (b)(6); (b)(7)(C) former Special Agent in Charge (SAC) of the Federal Bureau of Investigation (FBI) (b)(6); (b)(7)(C) in connection with alleged personnel actions taken by (b)(6); (b)(7)(C) concerning his wife, (b)(6); (b)(7)(C) within SAC (b)(6); (b)(7)(C) chain of command. Based upon the complaint, the OIG identified several areas of potential misconduct, including those implicating 5 C.F.R. § 2635.402(c) (conflict of interest requirement to disqualify), 5 C.F.R. § 2635.702 (use of public office for private gain), and related prohibitions described in FBI Ethics and Integrity Program Policy Directive and Policy Guide 0754DPG (Ethics Policy Guide). SAC (b)(6); (b)(7)(C) who retired from the FBI prior to being contacted by the OIG, declined our request for an interview.<sup>1</sup>

As described in this report, we conclude by preponderant evidence that SAC (b)(6); (b)(7)(C) violated 5 C.F.R. § 2635.402(c), 5 C.F.R. § 2635.702, and sections 4.5.2.2(c), 4.7.1.3, and 4.7.7.1(b) of the Ethics Policy Guide when he assigned his wife to serve on a committee (b)(6); (b)(7)(C) and then arranged for the committee, including his wife, to receive cash awards in recognition of such service. Part II of this report sets forth applicable regulations and policies. Part III describes our factual findings, and Parts IV and V provide our analysis and conclusion, respectively.

Unless otherwise noted, the OIG applies a preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct.<sup>2</sup> The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct.<sup>3</sup> We have provided a copy of this report to the FBI.

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<sup>1</sup> The OIG has the authority to compel testimony from current Department employees upon informing them that their statements will not be used to incriminate them in a criminal proceeding. The OIG does not have the authority to compel or subpoena testimony from former DOJ employees, including those who retire or resign during the course of an OIG investigation.

<sup>2</sup> Because the willful violation of the federal conflict of interest statute, 18 U.S.C. § 208, is a criminal offense, we referred our findings to the U.S. Attorney's Office (b)(6); (b)(7)(C) which declined to open an investigation.

<sup>3</sup> See 5 U.S.C. § 7701(c)(1)(B); see also 5 C.F.R. § 1201.56(b)(1)(ii).

## II. Applicable Regulations and Policies

### A. Conflict of Interest Disqualification Requirement—5 C.F.R. § 2635.402(c) and Section 4.5.2.2(c) of the Ethics Policy Guide

The Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) incorporate and interpret the financial conflict of interest prohibitions set forth in 18 U.S.C. § 208.<sup>4</sup> Codified at 5 C.F.R. Part 2635, the Standards of Conduct state, in part:

Statutory prohibition. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.<sup>5</sup>

The Standards of Conduct specifically require a government employee to disqualify himself from participating “personally and substantially” in a “particular matter” in which he or his spouse has a financial interest, unless the employee discloses the conflict and obtains a waiver from the appropriate official.<sup>6</sup> Such “disqualification requirement” provides, in part:

Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption...an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.<sup>7</sup> Disqualification is accomplished by not participating in the particular matter.<sup>8</sup>

The regulations define “particular matter,” “personal and substantial” participation, and “direct and predictable effect.” Section 2635.402(b)(3) states that “[t]he term particular matter encompasses only matters that involve deliberation, decision, or action that is

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<sup>4</sup> Pursuant to 18 U.S.C. § 216(a), “engag[ing] in the conduct constituting the offense” is a misdemeanor violation of § 208(a), whereas “willfully engag[ing] in the conduct constituting the offense” is a felony.

<sup>5</sup> 5 C.F.R. § 2635.402(a).

<sup>6</sup> See 5 C.F.R. § 2635.401-402. The FBI has delegated waiver authority to the Assistant Director of the Office of Integrity and Compliance, who serves as the FBI’s Deputy Designated Agency Ethics Official.

<sup>7</sup> Section 2635.402(b)(2)(i) defines “imputed interests”—which is to say, interests that will serve to disqualify an employee to the same extent were they the employee’s own interests—to include, among other things, the financial interests of an employee’s spouse.

<sup>8</sup> 5 C.F.R. § 2635.402(c).

focused upon the interests of specific persons, or a discrete and identifiable class of persons.” To participate “personally” means “to participate directly,” and it “includes the direct and active supervision of the participation of a subordinate in the matter.”<sup>9</sup> To participate “substantially” means that “the employee’s involvement is of significance to the matter.”<sup>10</sup> Personal and substantial participation may occur when, for example, an employee participates through “decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”<sup>11</sup> A particular matter will have a “direct” effect on a financial interest if there is a “close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.”<sup>12</sup> A particular matter will not have a direct effect on a financial interest, however, “if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.”<sup>13</sup> A particular matter will have a “predictable” effect “if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest.”<sup>14</sup> Lastly, the regulations make clear that “the dollar amount” is “immaterial.”<sup>15</sup>

Section 4.5.2.2(c) of the Ethics Policy Guide tracks, verbatim, § 2635.402(c).

**B. Use of Position for Personal Benefit—5 C.F.R. § 2635.702 and Sections 4.7.1.3 and 4.7.7.1(b) of the Ethics Policy Guide**

The Standards of Conduct address misuse of position in § 2635.702. Section 2635.702 states, in part, “An employee shall not use his public office...for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity...”<sup>16</sup> In addition to this general prohibition, § 2635.702 sets forth four “specific prohibitions” that apply the standard but “are not intended to be exclusive or to limit [its] application,” including § 2635.702(a), which states, “An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to

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<sup>9</sup> 5 C.F.R. § 2635.402(b)(4).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 5 C.F.R. § 2635.402(b)(1)(i).

<sup>13</sup> *Id.*

<sup>14</sup> 5 C.F.R. § 2635.402(b)(1)(ii)

<sup>15</sup> *Id.*

<sup>16</sup> 5 C.F.R. § 2635.702.

provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.”<sup>17</sup>

Section 4.7.1.3 of the Ethics Policy Guide tracks, verbatim, § 2635.702.

Section 4.7.7.1(b) of the Ethics Policy Guide, “Appropriate Superior-Subordinate Inter-Personal Relationships,” similarly echoes § 2635.702(a), stating that supervisors must not “engage in activities that may subtly or overtly coerce a subordinate to provide any personal benefit (to themselves or any other person) that is otherwise not authorized in the course of performing official duties.”

### III. Factual Findings

(b)(6); (b)(7)(C) the OIG received a complaint, chiefly pertaining to certain “adverse consequences [stemming from (b)(6); (b)(7)(C) organizational structure, which ha[d] disrupted workplace morale by [SAC (b)(6); (b)(7)(C) showing favoritism to his wife”—a reference to the fact that SAC (b)(6); (b)(7)(C) wife, (b)(6); (b)(7)(C) served at the time within his chain of command. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

The complaint alleged that SAC (b)(6); (b)(7)(C) favoritism manifested itself in various ways, including by assigning his wife, (b)(6); (b)(7)(C) to a committee (b)(6); (b)(7)(C) (b)(6); (b)(7)(C). According to the complaint, SAC (b)(6); (b)(7)(C) personally created and staffed the committee without consulting (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) and arranged for the committee members, including his wife, to receive cash awards. The complaint alleged that SAC (b)(6); (b)(7)(C) had approached (b)(6); (b)(7)(C) twice about providing awards to the committee members, including his wife. According to the complaint, on the second occasion, SAC (b)(6); (b)(7)(C) instructed (b)(6); (b)(7)(C) to submit a \$500 On-The-Spot Award for his wife and stated that he could not write the nomination because of his relationship to (b)(6); (b)(7)(C)

When interviewed by the OIG, (b)(6); (b)(7)(C) confirmed and expanded upon the allegations received by the OIG. She told the OIG that, without any prior notice to (b)(6); (b)(7)(C) or her, SAC (b)(6); (b)(7)(C) created a committee (b)(6); (b)(7)(C) and assigned to it his wife, (b)(6); (b)(7)(C) as well as other employees from the (b)(6); (b)(7)(C) Division. She stated that, after the conference, SAC (b)(6); (b)(7)(C) wanted everyone on the committee, including his wife, to receive a cash award and that she believes that SAC (b)(6); (b)(7)(C) wrote all of the award nominations except for his wife’s. Her recollection was that

<sup>17</sup> 5 C.F.R. § 2635.702(a).

SAC [REDACTED] "basically told us, 'Here's the cut and paste of what everyone said. You guys need to submit this.'"

[REDACTED]  
[REDACTED] She said that no formal policies or procedures existed to neutralize SAC [REDACTED] potential impact on his wife's professional affairs and that no one told her how to handle the situation or asked for her input. She stated that SAC [REDACTED] had "probably" mentioned to her that awards for his wife would have to be signed by a different SAC, but her impression was that his attitude was, "It's no big deal. We'll get around it, sort of."

According to FBI Awards Program Policy Guide 1095PG, an On-The-Spot Award "is given to an employee who has accomplished a project or a task exceptionally well that warrants immediate recognition but does not meet the...[criteria] for a higher-level award." Like all FBI monetary awards, On-The-Spot Awards require the approval of the nominee's division head (or his or her designee). However, of available awards, they have the lowest "maximum value" and, unlike most awards, need not be submitted for approval by the FBI Awards Program. Our investigation confirmed that [REDACTED] subsequently received the intended award of \$500. According to the Office of Integrity and Compliance, SAC [REDACTED] never disclosed his participation in his wife's committee assignment and cash award.

#### IV. Analysis

We found that SAC [REDACTED] orchestrated his wife's receipt of a \$500 cash award by directing his subordinate to complete the paperwork necessary for [REDACTED] to receive the award. By doing so, SAC [REDACTED] violated the above-described Standards of Conduct and FBI policies.

##### A. Conflict of Interest Disqualification Requirement—5 C.F.R. § 2635.402(c) and Section 4.5.2.2(c) of the Ethics Policy Guide

We examined SAC [REDACTED] conduct under 5 C.F.R. § 2635.402, which governs financial conflicts of interest. As described above, § 2635.402(a) prohibits an employee "from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest." Section 2635.402(b)(2)(i) defines "imputed interests" to include those of a spouse. Specifically, we found by preponderant evidence that SAC [REDACTED] violated 5 C.F.R. § 2635.402(c) and section 4.5.2.2(c) of the Ethics Policy Guide when he failed to disqualify himself from participating in his wife's award.

First, the nomination for and receipt of an award clearly constitute a "particular matter," defined above as a "matter[] that involve[s] deliberation, decision, or action that is

focused upon the interests of specific persons, or a discrete and identifiable class of persons.”

Second, SAC [REDACTED] participated “personally and substantially” in his wife’s award when he created the planning committee, assigned his wife to it, submitted awards for all but one of the committee members, and then provided the “cut-and-paste” award-nomination language to [REDACTED]. SAC [REDACTED] involvement was not merely “of significance to the matter”; his participation was the *sine-qua-non* of his wife’s receiving the cash award.<sup>18</sup> Moreover, SAC [REDACTED] statement to [REDACTED] “You guys need to submit this”—a feckless subterfuge—also established his “direct and active supervision of the participation of a subordinate in the matter.”

Third, it is axiomatic that ordering your subordinate to nominate your wife for a relatively routine On-The-Spot cash award will have a “direct and predictable effect” on her financial interest. Given the relatively informal nature of this lower-level award, the “chain of causation” connecting it with SAC [REDACTED] order that his wife be nominated for it could not be characterized as “attenuated or...contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.”

Given that SAC [REDACTED] never sought and received a waiver to participate in the matter from the Office of Integrity and Compliance, he clearly violated the disqualification requirements described in 5 C.F.R. § 2635.402(c) and section 4.5.2.2(c) of the Ethics Policy Guide.

#### **B. Use of Position for Personal Benefit—5 C.F.R. § 2635.702 and Sections 4.7.1.3 and 4.7.7.1(b) of the Ethics Policy Guide**

The available record establishes that SAC [REDACTED] used his public office for his wife’s private gain, in violation of the general prohibition announced in 5 C.F.R. § 2635.702 and section 4.7.1.3 of the Ethics Policy Guide. In fact, his conduct matches almost perfectly the “specific prohibition” appearing in § 2635.702(a) and section 4.7.1.3(a) of the Ethics Policy Guide; SAC [REDACTED] clearly used his position in a manner “intended to coerce or induce another person, including a subordinate,” to provide a benefit to his wife when he urged [REDACTED] to nominate [REDACTED] for a cash award.

His conduct similarly matches that proscribed by section 4.7.7.1(b) of the Ethics Policy Guide: “engag[ing] in activities that may subtly or overtly coerce a subordinate to provide any personal benefit (to themselves or any other person) that is otherwise not authorized in the course of performing official duties.” The authorities cited above

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<sup>18</sup> We would still find that SAC [REDACTED] had participated “personally and substantially” in his wife’s receipt of a cash award had he “merely” directed [REDACTED] to nominate the committee, *in toto*, for awards without referencing his wife.

establish that nominating one's spouse for a cash award lies well beyond the kind of conduct typically "authorized in the course of performing official duties."<sup>19</sup>

## V. Conclusion

As described in this report, we conclude by preponderant evidence that former (b)(6); (b)(7)(C) SAC (b)(6); (b)(7)(C) violated 5 C.F.R. § 2635.402(c), 5 C.F.R. § 2635.702, and sections 4.5.2.2(c), 4.7.1.3, and 4.7.7.1(b) of the Ethics Policy Guide when he assigned his wife to serve on a committee and then instructed his subordinate to formally nominate her for a cash award—one she ultimately received—in recognition of such service.

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<sup>19</sup> (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Moreover, as a result, SAC (b)(6); (b)(7)(C) conduct in this matter ran afoul of FBI Personal Relationships Policy Directive 0802D, section 6.1.2.3, which requires an employee to "refrain—without specific, advance management approval—from participating in a hiring or organizational decision [i.e., a decision involving a squad, a case, a shift, a vehicle assignment, or other working conditions.] involving an individual with whom he or she has a personal relationship and where a reasonable person would question the employee's impartiality."