



INVESTIGATIVE REPORT

National Oceanic and Atmospheric Administration

Investigation into Alleged
Contracting Misconduct and
Exertion of Improper Influence
Involving a Senior National
Weather Service Official

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Chapter I: Introduction

I. Basis for Investigation

In January 2012, the Office of Inspector General (OIG) of the United States Department of Commerce received three anonymous complaints alleging improprieties related to a Senior Official¹ in the National Weather Service (NWS), an agency within the National Oceanic and Atmospheric Administration (NOAA), being retained by NWS as a consultant immediately upon his retirement from the agency.² These complaints also alleged improprieties related to the payment by NWS of Senior Official's lodging expenses once he became a consultant.³ In addition, the complaints alleged that Senior Official had attempted to exert improper influence on NWS officials for purposes of securing a contractor position for his immediate family member.⁴

II. Investigative Methodology

To address these allegations, the OIG interviewed more than 20 witnesses, including the Senior Official who was the subject of our investigation. The OIG also obtained and reviewed relevant documents from multiple sources, including the subject, the contractor that employed the subject after his retirement from government service, and the agency for which the subject worked prior to his retirement.

III. Results of Investigation

Based on the evidence obtained over the course of our investigation, the OIG identified numerous problems related to the retention of Senior Official as a consultant for NWS that indicate a lack of understanding on the part of multiple NOAA officials regarding key government contracting and ethics regulations.

As for the actions of Senior Official himself, the OIG concluded that he was personally and substantially involved in the procurement of his own post-retirement consulting services for NWS. This involvement implicated numerous federal laws and regulations, including the criminal conflict-of-interest statute found in 18 U.S.C. § 208. Specifically, the evidence obtained over the course of our investigation establishes that Senior Official engaged in the following while still holding his position as a federal employee:

¹ The names of individuals referenced throughout the body of this report are masked to protect their privacy. The individuals are identified in Appendix A, *infra*.

² See First Complaint Intake Form, Case No. 12-0345 (Jan. 11, 2012); Second Complaint Intake Form, Case No. 12-0345 (Jan. 12, 2012); Undated Anonymous Letter to OIG, Case No. 12-0345 (rec'd Jan. 30, 2012).

³ See *id.*

⁴ See First Complaint Intake Form, Case No. 12-0345 (Jan. 11, 2012); Undated Anonymous Letter to OIG, Case No. 12-0345 (rec'd Jan. 30, 2012).

- Drafted and edited the applicable statement of work for his post-retirement consulting position;
- Participated with NWS officials in setting what labor category and rates would be used to pay for his consulting services; and
- Signed the task management plan that created the consulting position he would take upon his retirement on behalf of the contractor that would be employing him.

In addition, the evidence indicates that Senior Official took inappropriate steps to arrange for the payment by NOAA of approximately \$50,000 worth of his post-retirement housing expenses. In particular, while still holding his government position, Senior Official instructed his direct subordinate to facilitate his post-retirement use of a NOAA housing contract intended to accommodate senior executives on temporary assignments to NOAA headquarters in Silver Spring, Maryland, even though Senior Official was not eligible for housing under this contract once he became a consultant.

Evidence obtained by the OIG also establishes that, after he became a contractor himself, Senior Official contacted several NWS officials in an attempt to secure a contract position at the agency for one of his immediate family members. Although Senior Official denied acting inappropriately in seeking employment for his family member, we found that the overwhelming weight of evidence, including his own emails and consistent and credible testimony from other witnesses, contradicted Senior Official's version of events. Indeed, the evidence indicates that Senior Official may have gone so far as offering to influence NWS officials to promote one particular NWS employee if the employee could find a position for Senior Official's family member. We conclude that Senior Official's actions in attempting to influence the NWS staff were improper, and some of those actions may have implicated 18 U.S.C. § 201, the criminal statute prohibiting bribery of public officials.

While the OIG's investigation resulted in a finding that Senior Official's actions may have violated applicable federal law, the investigation also established that several other NWS officials share responsibility for the situation that took place. Indeed, the evidence indicates (1) that Senior Official acted at the direction and with the approval of his supervisor at all times and (2) that Senior Official's consulting arrangement was facilitated and approved by NOAA officials with responsibility for ensuring integrity in government contracting.

As a result of our investigation and initial briefings with NOAA's senior leadership regarding the evidence, NOAA took immediate action to terminate Senior Official's contractual arrangement in early 2012. In total, Senior Official's post-retirement work as a consultant cost the government \$471,875.34. Because of our conclusion that certain of Senior Official's actions may have violated federal criminal law, the OIG referred this matter for prosecution, but the relevant prosecutors declined to pursue charges. The OIG is also seeking the suspension and debarment of Senior Official from any future contracting work, and – because the evidence indicates an apparent lack of understanding about applicable laws and regulations on the part of multiple NOAA officials beyond Senior Official himself – the OIG is taking steps to ascertain whether this matter is indicative of more systemic “revolving door” contracting problems within the agency.

Chapter 2: Facts

A. Senior Official Participates in Creating a Post-Retirement Consulting Position for Himself with NWS

In 2009, a Senior Official in the NWS announced his plan to retire after more than 30 years with NOAA.⁵ Upon learning of this news, Senior Official's supervisor at the time (Supervisor) asked Senior Official to consider returning to the agency as a consultant once he left government employment.⁶ According to Supervisor, he made this request because Senior Official "had a wealth of knowledge" that Supervisor did not, given that Senior Official had been with their office for much longer than Supervisor himself.⁷ As Supervisor told the OIG, Senior Official's value was that he "brought to the table things I just didn't know,"⁸ and he relied on Senior Official for some things he "just wasn't on top of"⁹ in his duties. For this reason, Supervisor said, he hoped to have Senior Official remain with his staff long enough after his retirement "so that [NWS] would have the time [necessary] to transfer his knowledge" to whomever would replace him.¹⁰

According to Senior Official, he told Supervisor he would agree to return to NWS as a consultant under certain conditions, and Supervisor agreed to those conditions.¹¹ As a result, Senior Official explained, Supervisor directed him to begin coordinating with one of his subordinates (Subordinate I), a NWS Contracting Officer Technical Representative (COTR), and a NOAA AGO Representative to create his post-retirement consulting position.¹² Specifically, Senior Official told the OIG, the AGO Representative recommended the contract overseen by the COTR as a suitable vehicle for his post-government employment.¹³ The COTR then advised on what he would need to secure a consulting position for Senior Official under the contract, including a Statement of Work (SOW) describing what Senior Official's post-retirement duties would entail, an approved hourly consulting rate, and an approved period of performance for the arrangement.¹⁴

Following this, Senior Official told the OIG, he began working with Subordinate I to draft the SOW for his post-retirement position.¹⁵ For example, in a late-March 2010 email, Senior Official informed Supervisor how he had "edited the initial draft SOW" with guidance from Subordinate I, and how he "added [draft] terms and conditions" to the proposed wording of his contract, including an hourly rate for his services, which he estimated to be "[c]omparable"

⁵ See June 27, 2012 Written Statement Submitted by Senior Official to the OIG ("Written Statement"), at 1-2.

⁶ See *id.* at 2; Transcript of June 6, 2012 OIG Interview of Supervisor ("Supervisor Tr."), at 12:296-15:369.

⁷ See Supervisor Tr. at 3:62-5:103, 12:296-13:325.

⁸ See *id.* at 25:621-25.

⁹ See *id.* at 11:270-72.

¹⁰ See *id.* at 17:419-21; see also *id.* at 12:300-13:325.

¹¹ See Written Statement at 2.

¹² See *id.* at 2-3.

¹³ See *id.* at 3.

¹⁴ See *id.*

¹⁵ See *id.*; see also OIG Investigative Record Form ("IRF") on Interview of Subordinate 1 (Aug. 2, 2012), at 1-2.

to what NWS was paying him at the time.¹⁶ Specifically, Senior Official informed Supervisor, he anticipated that three months of consulting work at the rate he proposed would cost NWS “approx[imately] \$56k plus maybe 10% for [contractor] overhead.”¹⁷ While documentary evidence such as this indicates the extent to which Senior Official was personally involved in the process of creating his own consulting position, Senior Official emphasized in correspondence with the OIG how the AGO Representative, the COTR, and others were active participants in this process as well, and how it was Supervisor who first requested and ultimately approved of Senior Official’s consulting arrangement.¹⁸

B. Senior Official Coordinates with Others to Have NWS Pay for His Post-Retirement Housing Expenses

During this same March-April 2010 period, Senior Official was also working with others to have his post-retirement housing expenses paid by the government. According to Senior Official, he told Supervisor that one of the conditions for his returning to NWS as a consultant would be government-paid housing near the NWS office in Silver Spring, Maryland, where he would be required to perform his work under the terms of the contract that would be employing him.¹⁹ Senior Official made this demand, he explained to the OIG, because he had already made his permanent residence several hours away from Silver Spring in the months just prior to his retirement.²⁰

To obtain funding for his Silver Spring housing expenses, Senior Official coordinated with others to have NWS send money covering these costs to NOAA’s National Marine Fisheries Service (NMFS), which had a contractual arrangement with an apartment building near his office that NOAA used to accommodate its high-level employees during temporary details away from their permanent duty stations.²¹ Senior Official accomplished this transfer of funds by asking another of his subordinates (Subordinate 2) to inquire of NOAA’s Financial Policy Office whether the NMFS apartment contract could be used to house him once he became a contractor, and then instructing Subordinate 2 to work with a NMFS Official to set up the payment mechanism whereby NWS would reimburse NMFS for the cost of his housing.²²

¹⁶ See Email from Senior Official to Supervisor & Subordinate 1 Regarding Draft Contract Position (on file with OIG).

¹⁷ See *id.*

¹⁸ See generally May 18, 2015 Response to Chapter 2 of Draft Report on OIG Matter No. 12-0447-I Submitted by Senior Official to the OIG (“Response”). On May 11, 2015, the OIG sent Senior Official a draft copy of Chapter 2 of this Report and provided him with an opportunity to submit comments about the draft, which he did by email on May 18, 2015. The OIG has revised this Report in certain instances in light of those comments. A summary of the comments appears in Chapter 4, *infra*.

¹⁹ See Written Statement at 2.

²⁰ See *id.*

²¹ See *id.* at 4.

²² See Email Exchange Regarding Senior Official’s Instructions to Subordinate 2 (on file with OIG) (Senior Official asking Subordinate 2 to “respond to NMFS . . . with our ACCS info (use the NCWCP (CFG) O&M ACCS) to ‘reserve/fund’ this 90-day housing at the [apartment complex]”); see also Written Statement at 4.

According to both Senior Official and the COTR, Supervisor approved payment for Senior Official's post-retirement housing.²³ Indeed, the COTR recalled specifically asking Supervisor whether the contract for which he was responsible would be required to accommodate Senior Official's request for housing expenses, and Supervisor telling him that this would be unnecessary because the expenses would be paid separately by his office.²⁴ Moreover, several people within the office told the OIG that they believed Subordinate 2 would not have arranged for payment of Senior Official's housing without Supervisor's approval.²⁵

By contrast, in his interview with the OIG, Supervisor at first had difficulty recalling whether he approved payment of Senior Official's housing expenses and then doubted he would have done so because making such payments would have been unusual.²⁶ Eventually, Supervisor denied approving the payments altogether, telling the OIG that to do so would be "inappropriate" – indeed, such payments would be so inappropriate, Supervisor ultimately said, that he did not know how anyone in his office who knew of the payments would have thought they were proper.²⁷

This last sentiment – that NWS paying for Senior Official's housing would not be appropriate – was echoed by one of the agency's highest-ranking leadership officials. Although she did not learn of NWS making such payments until after Senior Official left his consulting position, this high-ranking official stated clearly to the OIG that such payments were not proper and should not have been made.²⁸

Aside from increasing the overall cost of Senior Official's consulting services, payment of Senior Official's housing expenses by NWS also ran afoul of the terms of the Blanket Purchase Agreement used to secure the apartment where Senior Official stayed, which authorized payment for the accommodation of high-level government employees only and did not permit payment for the housing of contractors like Senior Official.²⁹ But the NMFS Official who approved Senior Official's ongoing use of this contract told the OIG that she did not know he was no longer a government employee at the time, so she did not question the arrangement.³⁰

C. Senior Official Transitions from NWS Employee to NWS Contractor

In late April 2010, Senior Official signed the task management plan creating the contractor position that would provide him with his post-retirement consulting income.³¹ Despite his

²³ See Written Statement at 4; OIG IRF on Second Interview of Senior Official (June 14, 2012), at 1; OIG IRF on Interview of COTR (June 6, 2012), at 3.

²⁴ See OIG IRF on Interview of COTR (June 6, 2012), at 3.

²⁵ See, e.g., OIG IRF on Interview of High-Level Official 1 (June 20, 2012), at 3; OIG IRF on Second Interview of Senior Official (June 14, 2012), at 1-2; OIG IRF on Interview of High-Level Official 2 (June 11, 2012), at 3.

²⁶ See Supervisor Tr. at 41:1016-52:1288.

²⁷ See *id.* at 52:1289-57:1401.

²⁸ See Transcript of Feb. 7, 2013 OIG Interview of High-Ranking Leadership Official ("Leadership Official Tr."), at 44:1087-46:1140.

²⁹ See OIG IRF on Interview of NMFS Official (May 23, 2012), at 1-2; Basic Overnight Quarters, LLC Blanket Purchase Agreement (on file with OIG), at Statement of Objectives.

³⁰ See OIG IRF on Interview of NMFS Official (May 23, 2012), at 2.

³¹ See *generally* OIG IRF on Task Management Plan (June 6, 2012).

status as a government employee at the time, Senior Official signed this document in his capacity as a representative of the contractor for which he would work after his retirement, while Supervisor and the COTR signed as the designated representatives of NWS.³²

According to Supervisor, although he initially had concerns about whether making such an arrangement would be proper from a government-ethics standpoint, these concerns had dissipated by the time he signed off on Senior Official's consulting position.³³ The reason for this, Supervisor told the OIG, is because he "sort of got the sense that this is just the way business is done" at NWS.³⁴ Moreover, Supervisor said, NOAA AGO had been involved in creating the position, which made him feel "pretty comfortable" about it.³⁵

When interviewed by the OIG, the AGO Representative who assisted Senior Official in becoming a consultant said that he remembered very little about the process, but he did express the view that it was not really his responsibility to ensure Senior Official's consulting arrangement met government ethics requirements.³⁶ This responsibility, the AGO Representative said, was primarily the burden of Senior Official himself, who should have checked with ethics attorneys if anyone had questions about the propriety of him taking such a position or the process used to create it, which Senior Official never did.³⁷

With his consulting position and housing arrangement in place, Senior Official retired from NWS on one day in early May 2010 only to return to the agency the very next day as a consultant.³⁸ According to Supervisor, he was the person who oversaw Senior Official's work when he returned to NWS as a consultant, just as he had done prior to Senior Official's retirement.³⁹ Also according to Supervisor, Senior Official's duties as a consultant were very similar to those for which he was responsible prior to his retirement,⁴⁰ although, as Senior Official pointed out in correspondence with the OIG, he no longer performed the managerial and supervisory duties he once carried out after he became a contractor.⁴¹

Because he did not initially wish to work long-term as a consultant, the original period of performance set for Senior Official's contract was only 90 days, but Senior Official agreed to multiple NWS requests to extend this contract.⁴² When the government finally terminated the contract in early 2012, Senior Official had been a consultant for approximately 21 months.⁴³ During that time, and in addition to what he received from the federal government in retirement income, Senior Official collected more than \$330,000 in wages alone, with the monthly average of these wage payments working out to roughly \$3600 more per month than

³² See *id.*

³³ See Supervisor Tr. at 39:954-40:983.

³⁴ See *id.* at 39:970-71.

³⁵ See *id.* at 17:413-18:433; see also *id.* at 24:589-26:630, 39:972-40:983.

³⁶ See OIG IRF on Interview of AGO Representative (July 10, 2012), at 2.

³⁷ See *id.*; OIG IRF on Search of Department of Commerce Ethics Inquiry Database (Aug. 2, 2012).

³⁸ See Written Statement at 1.

³⁹ See Supervisor Tr. at 34:834-36:898.

⁴⁰ See *id.*

⁴¹ See Response at 7.

⁴² See generally OIG IRF on Contract Modifications (June 5, 2012).

⁴³ See Written Statement at 1.

what he made before retiring.⁴⁴ But Senior Official's post-retirement "raise" was in fact much greater than that, considering NWS paid for more than \$50,000 worth of his housing expenses during the consultancy phase of his employment with the agency.⁴⁵

Including all associated expenses, Senior Official's consulting services ultimately cost the government a total of \$471,875.34.⁴⁶ It is unclear how long NWS would have continued to retain Senior Official in his post-retirement years, and it is therefore unclear how long these consulting costs would have continued to grow had certain misconduct on the part of Senior Official not surfaced at the beginning of 2012 and precipitated his final departure from the agency.

D. Senior Official Exerts Influence on Others to Have NWS Employ His Immediate Family Member

During December 2011, Senior Official approached a NOAA Tsunami Program Official (TPO) stationed at NWS headquarters in Silver Spring and informed her that one of his immediate family members – a recent college graduate with a liberal arts degree and a specialization in foreign language – was looking for employment.⁴⁷ According to the TPO, Senior Official expressed the view that his family member had skills that could benefit the Tsunami Program, but the TPO told Senior Official in response that the Program had no employment vacancies at the time.⁴⁸ A short time later, Senior Official again approached the TPO about employing his family member, stating this time that Supervisor had approved use of some of the overhead in the Office of the Assistant Administrator (OAA) to help fund a position for her, and provided the TPO with a copy of his family member's resume.⁴⁹ The TPO told the OIG that Senior Official spoke in person with her on at least one additional occasion about hiring his family member, and he also sent her an email stating that her second-line supervisor (TPO Supervisor) had approved hiring the family member on a one-year contract:

[TPO Supervisor and] I had a good conversation. He will support[, at] 10%, a one-year support contract for my [family member]. . . . As we discussed[,] her interest is in [i]nternational affairs, but she (as discussed) is skilled in spreadsheets, [P]ower[P]oint, and MS Word. She is an excellent writer and a very quick learner. The optimum solution is for her to work 50% in [International Activities] in support of the international tsunami effort and 50% for you and [TPO Supervisor] in supporting the Strengthening US Tsunami [P]rogram.⁵⁰

⁴⁴ See OIG Memorandum to File on Investigative Findings Reported to the Inspector General (July 19, 2012), at 3; Voluntary Retirement Standard Form 50 Notification Regarding Senior Official (on file with OIG).

⁴⁵ See OIG Memorandum to File on Investigative Findings Reported to the Inspector General (July 19, 2012), at 1, 3.

⁴⁶ See *id.*

⁴⁷ See OIG IRF on Interview of TPO (Feb. 2, 2012), at 1; see also OIG IRF on First Interview of International Activities Office Administrative Official (Feb. 2, 2012), at Attachment 1 (the resume of Senior Official's family member).

⁴⁸ See OIG IRF on Interview of TPO (Feb. 2, 2012), at 1.

⁴⁹ See *id.* at 1-2.

⁵⁰ *Id.* at Attachment 1 (containing email exchange between Senior Official and TPO regarding the hiring of Senior Official's family member); see also *id.* at 2.

According to the TPO, she informed Senior Official each time he approached her on the subject that she had no available employment positions to offer his family member, and she ultimately went to her first-line supervisor to express the view that Senior Official had been acting unethically by repeatedly advocating that the Tsunami Program should hire his family member.⁵¹

According to TPO Supervisor, Senior Official also approached him about the Tsunami Program hiring his immediate family member and informed him that Supervisor had agreed to NWS finding her employment.⁵² Contrary to what Senior Official wrote in his email to TPO, TPO Supervisor did not recall any discussion about how a position for the family member would be funded, but he did recall being concerned about whether the Tsunami Program actually needed the services Senior Official's family member would supposedly provide, and also about whether hiring the family member would violate the law.⁵³ For these reasons, TPO Supervisor told the OIG, he did not approve hiring Senior Official's family member as a contractor.⁵⁴

In conjunction with his lobbying effort to get the Tsunami Program to find employment for his family member, Senior Official was also approaching other NWS officials to advocate for her hiring into an OAA component called the International Activities Office (IAO).⁵⁵ Specifically, Senior Official spoke with an IAO Administrative Official in December 2011 about hiring his family member as a travel manager on the IAO's international travel support contract beginning the following month.⁵⁶ According to the Administrative Official, Senior Official offered to provide him with a copy of his family member's resume, told the Administrative Official that he would appreciate it if he could get his family member an interview with the IAO, and offered to exert influence to have the Administrative Official promoted from the GS-13 position he held at the time to a higher-paid GS-14 position if he assisted Senior Official in getting his family member hired.⁵⁷ The Administrative Official reported to the OIG that Senior Official approached him again about hiring his family member in January 2012, and when the Administrative Official informed Senior Official that the IAO did not have any travel manager openings at that time, Senior Official reportedly told him that he would arrange to have two positions added to the Administrative Official's area of oversight so that he could hire Senior Official's family member.⁵⁸ Later, Senior Official provided the Administrative Official with a copy of his family member's resume and requested to speak with him again about the two new positions Senior Official had mentioned.⁵⁹ According to the Administrative Official, there was nothing in the resume of Senior Official's family member to suggest she had the necessary skills to serve as a competent travel manager for NWS, he felt very uncomfortable about Senior Official's offer to exert influence to get him a promotion in exchange for the Administrative

⁵¹ See *id.*

⁵² See OIG IRF on Interview of TPO Supervisor (Feb. 2, 2012), at 1.

⁵³ See *id.*

⁵⁴ See *id.* at 1-2.

⁵⁵ See, e.g., OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1.

⁵⁶ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 1-2.

⁵⁷ See *id.* at 2; OIG IRF on Second Interview of IAO Administrative Official (Aug. 5, 2014), at 1-2.

⁵⁸ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 2.

⁵⁹ See *id.*

Official's assistance in hiring the family member, and, accordingly, he reported all of this to his supervisor (IAO Supervisor).⁶⁰

The IAO Supervisor corroborated what the Administrative Official told the OIG about their conversations, and she also noted that Senior Official had approached her directly about the IAO hiring his family member.⁶¹ Specifically, the IAO Supervisor explained, Senior Official came to her in December 2011 and proposed an arrangement whereby her office and the Tsunami Program would jointly fund a contract position for his family member, who could then provide support to both offices.⁶² The IAO Supervisor reported this proposition to a high-ranking NWS official, and later reported Senior Official's discussion with the Administrative Official about adding two new positions so that his family member could be hired.⁶³ According to the IAO Supervisor, the high-ranking official with whom she spoke expressed the view that what Senior Official was doing to get his family member hired was unethical and beyond the bounds of what a contractor should be permitted to do.⁶⁴

In his interview with the OIG, Senior Official acknowledged providing his family member's resume to the TPO and TPO Supervisor, but expressed uncertainty about whether he had provided the resume to the IAO Administrative Official.⁶⁵ Moreover, Senior Official denied that he ever advocated that NWS should create a position for his family member, denied that he ever suggested to anyone that Supervisor had agreed that his family member should be hired, and denied that he attempted to exert influence on anyone at NWS for purposes of securing employment for his family member.⁶⁶ Senior Official did state, however, that a high-ranking NWS official told him in January 2012 that she had received complaints about him attempting to exert influence to get his family member hired and admonished him to refrain from seeking employment for his family member at NWS from that point forward.⁶⁷

As a result of the OIG's investigation and reporting of Senior Official's actions – particularly his effort to influence agency employees to hire his immediate family member – NOAA terminated Senior Official's consulting contract in early 2012, and he has not been employed by the agency since that time.⁶⁸

⁶⁰ See *id.*

⁶¹ See OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1-2.

⁶² See *id.*

⁶³ See *id.* at 2.

⁶⁴ See *id.*

⁶⁵ See OIG IRF on First Interview of Senior Official (Feb. 2, 2012), at 2-3.

⁶⁶ See *id.* at 3-4.

⁶⁷ See *id.* at 3.

⁶⁸ See, e.g., Email from NOAA AGO Official to Contractor Representative Regarding Termination of Senior Official's Consulting Contract (on file with OIG).

Chapter 3: Analysis

I. Legal Framework

The OIG has identified the following federal laws and regulations as being implicated by the facts of this case:

A. 18 U.S.C. § 208: Acts Affecting a Personal Financial Interest

18 U.S.C. § 208 is a criminal statute that prohibits federal employees from acting in an official capacity in matters that will affect their financial interests. The text of this law that is most pertinent here reads as follows:

[W]hoever, being an officer or employee of the executive branch of the United States Government, . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a . . . contract . . . or other particular matter in which, to his knowledge, he . . . has a financial interest – [s]hall be subject to the penalties set forth in section 216 of this title.⁶⁹

B. 5 C.F.R. § 2635.402: Disqualifying Financial Interests

The same activity criminalized by 18 U.S.C. § 208 is also prohibited by the Code of Federal Regulations:

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 . . . has a financial interest, if the particular matter will have a direct and predictable effect on that interest.⁷⁰

C. 5 C.F.R. § 2635.702: Use of Public Office for Private Gain

Similarly, the Code of Federal Regulations also prohibits executive branch employees from using their government positions to benefit themselves personally. According to 5 C.F.R. § 2635.702: “An employee shall not use his public office for his own private gain,” nor shall any federal employee “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 provide any benefit, financial or otherwise, to himself”⁷¹

⁶⁹ 18 U.S.C. § 208(a).

⁷⁰ 5 C.F.R. § 2635.402(a).

⁷¹ 5 C.F.R. § 2635.702; *id.* at § 2635.702(a).

D. 18 U.S.C. § 201: Bribery of Government Officials and Witnesses

Federal law also criminalizes the bribery of government officials pursuant to 18 U.S.C. § 201, which states in pertinent part:

Whoever . . . directly or indirectly, corruptly gives, offers or promises anything of value to any public official . . . with intent . . . to influence any official act . . . shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.⁷²

E. 48 C.F.R. § 37.104: Personal Services Contracts

Finally, Section 37.104 of the Federal Acquisition Regulation (FAR) prohibits the government from entering into what are known as “personal services contracts” unless an agency is “specifically authorized by statute . . . to do so.” According to the FAR:

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.⁷³

II. Investigative Findings

A. Senior Official’s Participation in the Process of Creating His Own Consulting Position and of Arranging Payment for His Post-Retirement Housing Expenses Implicated the Prohibitions Against Conflicts of Interest Found in 18 U.S.C. § 208, 5 C.F.R. § 2635.402, and 5 C.F.R. § 2635.702

The OIG determined that Senior Official’s involvement in procuring his own post-retirement consulting services for NWS while still serving as a government official implicated several federal laws and regulations prohibiting conflicts of interest, the most notable being 18 U.S.C. § 208, which bars federal employees from participating personally and substantially in an official capacity in any particular matter in which they have a financial interest if the particular matter will have a direct and predictable effect on that interest.

The evidence establishes that Senior Official was significantly involved in the process of creating the consulting position he would occupy after his retirement from NWS. In particular, Senior Official and Subordinate I jointly drafted the SOW outlining the services he would provide as a

⁷² 18 U.S.C. § 201(b).

⁷³ 48 C.F.R. § 37.104(a).

consultant, Senior Official participated in discussions establishing the rate of pay he would receive as a consultant, and he even signed (on behalf of the chosen contractor) the task management plan approving the creation of the consulting position that would guarantee him his post-retirement income, all while still holding his government position. Further, Senior Official's instructions to Subordinate 2 resulted in the government paying his post-retirement housing expenses. All told, and in addition to whatever he collected in retirement income, Senior Official's actions in his official capacity as a government employee contributed directly to his receiving nearly \$390,000 in salary and housing expenses from NWS once he left the agency. And while Senior Official may not have known just how much he stood to gain from these actions at the time he took them, the fact that he would benefit financially from his actions was not only predictable, but it was also certain.

These facts also establish that Senior Official may have run afoul of the Standards of Ethical Conduct for Employees of the Executive Branch – particularly, 5 C.F.R. § 2635.402, which imposes regulatory restrictions against employees of federal agencies like NWS engaging in the conduct prohibited by 18 U.S.C. § 208, and 5 C.F.R. § 2635.702, which prohibits federal employees from using their position for their own private gain.⁷⁴

While the record shows that Senior Official likely would not have engaged in this conflict of interest had it not been requested and approved by Supervisor and facilitated by others at NWS, including officials with greater contracting knowledge and experience than himself (such as the AGO Representative and the COTR), that fact does not exonerate Senior Official, who had several decades of government experience at the time he involved himself in arranging for his own post-retirement consulting income. Similarly, we believe that it reflected poor judgment for Senior Official to task one of his subordinates to assess the propriety of his using the NMFS housing contract and then direct that same subordinate to make arrangements for the payment of his housing expenses. Senior Official's use of Subordinate 2 for these tasks, as opposed to seeking the advice and assistance of someone without an incentive to please him, was not an appropriate way to handle an issue so fraught with ethical implications as this one. Indeed, according to Subordinate 2, he did not even contemplate questioning the propriety of Senior Official directing him to provide NMFS with the NWS accounting codes used to pay for his housing because, Subordinate 2 told the OIG, Senior Official "was so close to us" that he "wasn't even thinking it [could be] inappropriate" for him to follow Senior Official's instructions in this regard.⁷⁵ Overall, we believe that, due to his long government career and extensive knowledge about government procedures, Senior Official should have been aware of applicable federal law and totally removed himself from the process of creating his consulting position and arranging for the payment of his housing expenses to avoid any appearance of impropriety. At the very least, we believe that Senior Official should have exercised more caution under the circumstances and sought ethics advice from appropriate Department of Commerce officials before taking the actions that he did.

⁷⁴ Because the OIG concluded that Senior Official's actions implicated criminal law and ethics regulations, it referred this matter to the Office of Government Ethics (OGE) and to the Department of Justice (DOJ) for prosecution. See OGE Form 202 Regarding OIG Matter No. 12-0447-I (on file with OIG). But the relevant prosecutors declined to pursue charges. See *id.*

⁷⁵ See OIG IRF on Interview of Subordinate 2 (May 30, 2012), at 2.

In sum, the evidence shows that, while multiple government officials share responsibility for the situation that developed, Senior Official's involvement in the process of creating his own consulting position and of arranging for the payment of his housing expenses was improper and may have been prohibited by applicable federal law.

B. Senior Official's Exertion of Influence to Obtain Employment for His Immediate Family Member at NWS Was Improper and Implicated the Prohibition Against Bribery of Government Officials Found in 18 U.S.C. § 201

Although Senior Official denied that he did anything improper when seeking a contract position for his immediate family member, we found other evidence, including contemporaneous emails and the testimony of other witnesses contradicting that of Senior Official, to be more consistent and credible. In contrast with what Senior Official told the OIG, this other evidence supports the view that Senior Official attempted to use his standing as a former high-ranking official at NWS to influence official hiring actions within the agency. We found that, while most of his actions in this regard were not prohibited by federal law because he was not a federal employee at the time, Senior Official's actions certainly reflected poor judgment and also an attempt to circumvent federal hiring and contracting procedures.

Indeed, it is also quite plain from the resume of Senior Official's family member, focused as it is on liberal arts and foreign language training, that she was ill-suited for the Tsunami Program and the IAO travel support positions that Senior Official sought out for her, which highlights the fact that his actions reflected poor judgment on his part.⁷⁶

Most significantly, the evidence indicates that Senior Official may have offered to help upgrade the position of one particular NWS employee from the GS-13 level to the GS-14 level in exchange for hiring Senior Official's family member. When addressing this issue, Senior Official denied that he ever made such an offer and, in any event, Senior Official argued, he had no power as a contractor to accomplish such an upgrade.⁷⁷ But the Administrative Official who reported the offer was unequivocal in his assertions about it during not one but two in-person interviews with the OIG.⁷⁸ Moreover, the Administrative Official contemporaneously reported the alleged offer to his supervisor, who confirmed as much during her OIG interview.⁷⁹ If it was indeed made, the OIG concludes that Senior Official's offer to exert influence to upgrade the Administrative Official's position in exchange for the hiring of his family member would implicate 18 U.S.C. § 201, the federal prohibition against bribery of public officials.⁸⁰

Ultimately, Senior Official was unsuccessful in obtaining employment at NWS for his family member, but that does not excuse the improper tactics he used to seek such employment during his tenure as a contractor for the agency.

⁷⁶ See generally OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at Attachment 1 (the resume of Senior Official's family member).

⁷⁷ See Response at 8-10.

⁷⁸ See OIG IRF on First Interview of IAO Administrative Official (Feb. 2, 2012), at 2; OIG IRF on Second Interview of IAO Administrative Official (Aug. 5, 2014), at 1-2.

⁷⁹ See OIG IRF on Interview of IAO Supervisor (Feb. 2, 2012), at 1.

⁸⁰ This potential violation was included in the OIG's referral of this matter to the OGE and DOJ. See *supra* note 74.

C. The Hiring of Senior Official Was Contrary to the Federal Acquisition Regulation and May Indicate Troubling “Revolving Door” Issues within NOAA

Finally, the OIG determined that Senior Official’s consulting arrangement as a whole was in violation of the Federal Acquisition Regulation because it amounted to a prohibited “personal services contract” as defined by FAR § 37.104, and that this contract may be indicative of a routine and troubling practice at NOAA of hiring former employees as contractors for purposes of carrying out similar duties to those they performed prior to leaving federal service.

The FAR provides guidance on how to ascertain whether a government contract is for the retention of personal services, with the following factors being of particular relevance: (1) performance of the contracted services is carried out on site for the government agency, (2) the equipment used for the services is furnished by the government, (3) the services are applied directly to the integral effort of the agency in furtherance of its 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, and (6) the inherent nature of the service or the manner in which it is provided reasonably requires government direction or supervision of the contractor employee 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.⁸¹

Here, the evidence establishes that NWS used a personal services contract to retain Senior Official after his retirement without any apparent statutory authorization for doing so. Indeed, all of the factors listed in FAR § 37.104 for purposes of identifying a personal services contract are evident in this case. For example, Senior Official performed most of his consulting work “on site” at NWS headquarters, meaning the first factor is met here.⁸² Similarly, because Senior Official performed this consulting work in the very same office he occupied prior to leaving government service, it is apparent that the “equipment” he used to perform this work was furnished to him by the government, meaning the second factor is met too.⁸³ Moreover, it is plain that Senior Official’s consulting services were in furtherance of the “assigned mission or function” of NWS and that “comparable services meeting comparable needs” are performed by civil service personnel – in fact, as Supervisor acknowledged to the OIG, Senior Official performed very similar duties in his consulting role as he did prior to retiring as a federal employee – which means the third and fourth factors are easily met.⁸⁴ Further, the evidence indicates that NWS should have anticipated that Senior Official’s consulting contract would “last beyond one year,” given that Senior Official took on duties he performed while holding a permanent position with the government, and given the fact that Senior Official ended up working as a consultant for almost two years (and might have worked in that capacity even

⁸¹ See 48 C.F.R. § 37.104(d).

⁸² See, e.g., Supervisor Tr. at 34:847-35:851.

⁸³ See, e.g., *id.*; Leadership Official Tr. at 44:1093-45:1112 (high-ranking NWS leadership official explaining her understanding that Senior Official retired and then “the next day [he] was already back . . . in the same cubicle doing the same thing”).

⁸⁴ See Supervisor Tr. at 35:875-36:898 (Supervisor explaining that Senior Official did not “take on any new duties as a consultant outside of his former . . . type [of] duties”).

longer had his effort to obtain employment for his family member not surfaced), which means the fifth factor is met.⁸⁵ Finally, the sixth factor is also met because the inherent nature of Senior Official's consulting services – which Supervisor described as having “overlap” with those provided by one of his deputies – required supervision and direction by government officials to protect the government's interests.⁸⁶

Perhaps the most troubling aspect of Senior Official's personal services contract with NWS is that the agency appears to have paid him to do many of the same things as a consultant that it had been paying him a lower salary to do while he was still a federal employee. In his interview with the OIG, Supervisor rationalized this fact by explaining that, throughout the initial period Senior Official worked as a contractor, his office was “trying to hire people who would come in and join the Weather Service because of the vacancy that [Senior Official] created,” but, he said:

[T]he reality of it is, is that [many months into Senior Official's consulting contract,] we still needed him. We were – you know, we weren't weaning our way off as much as his value was something that, well, just a little longer or something. . . . Even though we were trying to wean him off – wean ourselves off – his value still remained relatively high. So I knew there was a time when we would have to just bite the bullet and just say we're going to have to figure out how to make it without [Senior Official] because the longer he stayed it wasn't really helping [the office make the necessary adjustments after his retirement].⁸⁷

Whatever justification NWS may have had for retaining Senior Official's services as a contractor, it is troubling that the agency was willing to “hire back” one of its former employees at what amounted to an increased rate of pay so quickly after his departure from federal employment, and that NOAA contract control measures apparently did not cause anyone to question or at least more closely scrutinize this arrangement. Even more alarming is the fact that several people with whom the OIG spoke during our investigation expressed the view that this practice is commonplace at NOAA. For example, one of the highest-ranking NWS leadership officials wondered aloud during her OIG interview “why we have all these people that retire and then we go and hire them to come back.”⁸⁸ Similarly, in his interview with the OIG, the AGO Representative who facilitated Senior Official's consulting arrangement opined that NOAA employees returning as contractors once they retire “happens all the time.”⁸⁹ Likewise, the COTR who helped Senior Official become a contractor told the OIG that he had no concerns about Senior Official becoming a consultant immediately after his retirement because he had heard of other NWS employees doing the same thing, and he viewed such a career transition as a great way for retiring federal employees to make money from their institutional knowledge of an agency.⁹⁰

⁸⁵ See *id.*; OIG IRF on Contract Modifications (June 5, 2012); Written Statement at 1.

⁸⁶ See Supervisor Tr. at 35:875-36:898.

⁸⁷ See *id.* at 36:899-38:927.

⁸⁸ See Leadership Official Tr. at 44:1095-97.

⁸⁹ See OIG IRF on Interview of AGO Representative (July 10, 2012), at 2.

⁹⁰ See OIG IRF on Interview of COTR (June 6, 2012), at 1.

Comments such as these indicate that NOAA may have a systemic “revolving door” problem that created conditions encouraging the abuses committed in this case. While that fact would not excuse the improprieties identified by the OIG during this investigation, it may help explain why NOAA officials so readily permitted these improprieties to take place.

Chapter 4: Response

On May 11, 2015, the OIG sent Senior Official a draft version of Chapter 2 of this Report and invited him to submit comments about the draft, which he did by email on May 18, 2015. The OIG has revised this Report in certain instances as a result of Senior Official's comments, which are broadly grouped by topic and summarized below:

Comments on Senior Official's Participation in Creating His Own Consulting Position:

- Senior Official argued that the OIG is incorrect to suggest he engaged in improprieties of any kind and pointed out that he contributed value to NWS both as an employee and as a consultant.
- Senior Official emphasized that it was NWS officials – primarily Supervisor – who wanted him to become a consultant to the agency; this was not a position he sought for himself.
- Senior Official only involved himself in the process of creating his consulting position because Supervisor wanted him to start working as a contractor immediately upon his retirement, which necessarily required him to participate in this process while he was still a federal employee. If Senior Official had been informed that participating in this process could raise ethical concerns, he would have simply retired and postponed discussion about his return to NWS as a consultant until after the agency deemed it appropriate.
- The creation of Senior Official's consulting position was a collaborative effort undertaken at the direction of Supervisor, and several NOAA officials reviewed and approved the arrangement that resulted from this effort. Senior Official believes everyone who participated in the process acted in good faith, and he argued that, to the extent there was anything improper about this process, blame for the situation must be shared.
- Senior Official argued that the hourly rate he charged as a consultant was fair because it corresponded to the amount the government paid him while he was still a federal employee plus what the government paid to cover several expenses that it would no longer take care of upon his retirement, including health benefits, life insurance, holiday pay, annual leave, sick leave, retirement contributions, and FICA contributions. Senior Official's rate also accounted for the self-employment tax that he would be required to pay as a consultant.
- Senior Official pointed out that he had initially proposed an hourly rate including an amount intended to cover his post-retirement housing costs, but he agreed to eliminate this additional amount when NWS told him that doing so would benefit the agency by putting him in a more economical labor category under the contract vehicle that would be used to employ him.

Comments on NWS Paying for Senior Official's Housing Expenses:

- Senior Official emphasized that NWS had always been aware that payment of his housing costs would be a condition required for the agency to retain his consulting services.
- Rather than seeking reimbursement for these expenses through the materials portion of the contract vehicle used to employ him as a consultant, Senior Official advocated that NWS look into whether he could use the agency's existing NMFS housing arrangement instead because Senior Official believed this would save NOAA money.
- Senior Official assumed he was eligible to use the NMFS housing arrangement because it was meant to provide lodging for NOAA officials on temporary duty travel, and he believed the fact that he had made his permanent residence several hours away from where he was required to work meant he was eligible for temporary duty housing.
- Senior Official argued that payment of his housing expenses did not increase the overall cost of his consulting services because he would never have agreed to consult for NWS in the first place if the agency did not cover these expenses somehow.
- Senior Official had no knowledge that there was anything improper about NWS using its NMFS housing arrangement to cover the cost of his post-retirement lodging expenses; he relied in good faith on the reports he received from others, including Subordinate 2, that his use of the housing arrangement was permissible.

Comments on Senior Official's Transition from NWS Employee to NWS Contractor:

- Senior Official reiterated that he relied on the advice, direction, and approval of other NOAA officials when transitioning into his role as a consultant for NWS, so he had no reason to believe that there was anything improper about the way this transition took place.
- Senior Official took issue with the OIG characterizing his consulting duties as identical to those he performed while a federal employee, stating that his core duties were primarily managerial and supervisory in nature before he retired and emphasizing that he had no such managerial or supervisory duties once he became a consultant.
- Senior Official pointed out that he had no intention of becoming a long-term consultant for NWS, and that he only agreed to have his consulting arrangement extended beyond the original 90-day period of performance at the request of NWS. He emphasized that, each time NWS extended the contract, NOAA officials reviewed and approved the necessary amendments. He argued that, if there were anything improper about this arrangement, NOAA officials could have rescinded it at any time, and the fact that NOAA did not rescind the arrangement indicated to him that there was nothing improper about it.

- Senior Official reiterated that he brought value to NWS as a consultant and stated that it would be incorrect to assume that he only obtained and kept his consulting position due to some influence he may have had over agency officials.

Comments on Senior Official's Effort to Obtain Employment for His Family Member:

- Senior Official expressed regret about approaching NWS officials about hiring his family member, not because he believes there was anything improper about doing this, but instead because he understands from the OIG's Report that his actions had made others feel uncomfortable.
- Senior Official's recollection about the conversations he had with NWS officials concerning the hiring of his family member differs somewhat from the witnesses whose accounts are included in the OIG's Report, but Senior Official believes any discrepancies are for the most part due to misunderstandings and the passage of time.
- By contrast, Senior Official characterized the account given to the OIG by the IAO Administrative Official about how Senior Official offered to exert influence to upgrade the Administrative Official's position in exchange for hiring his family member as "patently false and malicious." Senior Official provided his own version of what happened when he spoke with the Administrative Official and then characterized the Administrative Official's version of events as "uncorroborated" and "untrue." Senior Official concluded by arguing that his version of events is more credible because it would make little sense for him to have put his reputation and career in jeopardy by offering a "bribe" to the Administrative Official simply for the sake of securing a low-level contractor position for his family member.

Chapter 5: Conclusion

Senior Official's participation in creating his own consulting contract, his actions to arrange for payment of his post-retirement housing expenses, and his exertion of influence to obtain government-paid employment for his immediate family member implicated multiple legal and regulatory restrictions meant to ensure integrity in government. Indeed, because the OIG concluded that some of Senior Official's conduct may have been criminal in nature, it referred this matter to both the Office of Government Ethics and to the Department of Justice for prosecution, but the relevant prosecutors declined to pursue charges. To its credit, NOAA acted quickly to terminate Senior Official's contractual association with NWS once the OIG reported our initial findings in this matter, which prevented any additional improprieties from taking place.

As a result of this investigation, the OIG is seeking the suspension and debarment of Senior Official from any future contracting work. Further, to evaluate whether this matter is indicative of more widespread problems within the agency, the OIG is taking steps to ascertain how common it is for NOAA employees to return as contractors after leaving full-time employment to determine (1) whether existing contract control measures are functioning properly and (2) whether the agency should implement additional safeguards to prevent abuses such as those that took place here.

Appendix A: Identification Table

Identity of People Referenced in Office of Inspector General Report on Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official (OIG Case 12-0447-I)

Report Pseudonym	Name ⁹¹	Title / Office ⁹²
Senior Official	[REDACTED]	Former NWS [REDACTED]
Supervisor	[REDACTED]	NWS [REDACTED]
Subordinate 1	[REDACTED]	NWS [REDACTED]
COTR	[REDACTED]	NWS [REDACTED]
AGO Representative	[REDACTED]	NOAA Acquisition and Grants Office [REDACTED]
Subordinate 2	[REDACTED]	NWS [REDACTED]
High-Level Official 1	[REDACTED]	[REDACTED] NWS [REDACTED]
High-Level Official 2	[REDACTED]	NWS [REDACTED]
High-Ranking Leadership Official	[REDACTED]	NWS [REDACTED]
NMFS Official	[REDACTED]	NMFS [REDACTED]

⁹¹

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⁹² The titles listed here were accurate at the time of the individual’s interview with the OIG; some or all of these titles may no longer be accurate.

Report Pseudonym	Name ⁹³	Title / Office ⁹⁴
TPO Supervisor		NWS [Redacted]
		[Redacted]
IAO Supervisor		NWS International Activities Office [Redacted]
		Grants Office [Redacted]
Contractor		--

⁹³

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