




March 26, 2018

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

TO: ROBERT W. PATTERSON  
ACTING ADMINISTRATOR  
DRUG ENFORCEMENT ADMINISTRATION

FROM:   
MICHAEL E. HOROWITZ  
INSPECTOR GENERAL

SUBJECT: Recommendation for the Drug Enforcement Administration to Review whether its Field Offices are Engaging in Unlawful Fundraising on Behalf of the Drug Enforcement Administration Survivors Benefit Fund

In February 2017 the Office of the Inspector General (OIG) received two complaints made by the Drug Enforcement Administration's (DEA) Office of Chief Counsel to its Office of Professional Responsibility alleging that DEA employees in [REDACTED] and another DEA division were improperly raising funds on behalf of the Drug Enforcement Administration Survivors Benefit Fund (SBF). The SBF is a private, non-profit organization created for the purpose of providing financial support to families of DEA employees and task force officers killed in the line of duty. While the SBF has an indisputably important mission, federal regulations expressly prohibit certain fundraising activity by federal employees. We therefore investigated both complaints.

This memorandum addresses an allegation that personnel in the DEA's [REDACTED] Division were operating a store out of the [REDACTED] office selling merchandise, including t-shirts and mugs emblazoned with the DEA logo, for the purpose of raising proceeds for the SBF in violation of federal regulations.<sup>1</sup> We concluded that the [REDACTED] Division operated a store for many years for the sole benefit of the SBF in contravention of federal ethics regulations.<sup>2</sup>

<sup>1</sup> We also investigated allegations that during work hours DEA employees in another DEA division solicited donations to the SBF from non-federal entities in support of an SBF-sponsored golf tournament. We concluded that a DEA employee violated DEA policy and acted in contravention of federal ethics regulations. We address these allegations in a separate report.

<sup>2</sup> The DEA does not have a policy regarding the operation of stores in its divisions.

Based on this finding, we recommend that the DEA determine if any other field divisions are currently operating stores, determine if proceeds from these stores are being directed to the SBF or similar organizations, immediately take action to bring into compliance any stores that are not abiding by applicable ethics rules, and draft a policy regarding the operation of division stores to ensure ongoing compliance with all laws and ethics regulations.

## Background

The Drug Enforcement Administration Survivors Benefit Fund is a 501(c)(3) organization created in 1997 for the purpose of providing financial benefits to surviving family members of DEA employees and deputized task force officers killed in the line of duty. The SBF also runs programs to preserve the memory of those slain officers and employees. The SBF has five board members, including a President, Treasurer, and three Directors, and maintains its own website. On its website, it is alternatively referred to as the “DEA SBF,” the “Drug Enforcement Administration Survivors Benefit Fund,” and the “DEA Survivors Benefit Fund.” Many DEA field offices hold fundraisers throughout the year to support the SBF.<sup>3</sup> The SBF raises funds in part by participating annually in the Combined Federal Campaign (CFC).<sup>4</sup>

The standards of ethical conduct for employees of the executive branch are provided in 5 C.F.R. § 2635. Its subparts cover a wide-array of topics that dictate how federal employees should comport themselves when fulfilling their roles as federal employees. Section 2635.704 states that government property, such as computers, e-mail accounts, and office supplies, may only be used for authorized purposes. Section 2635.808 prohibits federal employees from using their official titles, positions or any authorities associated with their public office to further any fundraising efforts outside of the CFC. While 5 C.F.R. § 2635.808 provides that a federal employee may engage in fundraising in his or her personal capacity for non-profit organizations, it also states that the employee may not personally solicit funds or other support from prohibited sources or use one’s official title, position or any authority associated with one’s public office to further any fundraising efforts.<sup>5</sup>

In 2014 the OIG issued a report detailing its investigation of the DEA’s use of Kenneth “Wayne” McLeod as a provider of retirement and financial planning

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<sup>3</sup> According to the SBF website, in 2018, DEA Headquarters and the DEA divisions in Philadelphia, St. Louis, Atlanta, Seattle, and Detroit will host golf tournaments for the purpose of raising funds for the SBF. See <https://www.survivorsbenefitfund.org/?fuseaction=event.list> (accessed March 14, 2018).

<sup>4</sup> The SBF applies to be part of the CFC independently from the DEA. Furthermore, DEA guidance provides that employees are not to use official resources to promote specific charities during the CFC.

<sup>5</sup> Prohibited sources include, among other things, organizations and individuals doing business or seeking to do business with the employee’s agency.

seminars. During the course of that investigation we found, among other things, that DEA officials were violating the aforementioned subparts of 5 C.F.R. § 2635 by engaging in improper activities in connection with the SBF. These violations included DEA employees soliciting funds from prohibited sources on behalf of the SBF, DEA supervisors soliciting funds from subordinates for the SBF's benefit, and DEA employees using official time while engaging in SBF-related activities.

As a consequence of our findings, we recommended that the DEA conduct a review and issue guidance regarding the DEA's relationship with the SBF. We recommended that such guidance address: (i) the proper limitations on the use of DEA time and resources in support of SBF fundraising; (ii) the ban on soliciting funds from prohibited sources; and (iii) the need for the DEA to avoid favoring or appearing to favor supporters of the SBF in DEA decisions.

In response to our recommendations, in approximately June 2015 the DEA's Office of Chief Counsel drafted a document titled *Frequently asked Questions Regarding Raising Funds and Conducting Other Solicitations at the Workplace* (FAQs). The FAQs were the DEA's effort to concisely explain the rules contained in the federal regulations relating to fundraising. The FAQs also made clear that the CFC is the only authorized activity for the solicitation of employees in the federal workplace. The FAQs stated that the "[u]se of official time and Government resources, to . . . sell items in support of the charitable organizations is prohibited." The Office of Chief Counsel also prepared a document titled *Interacting with Private Organizations* that included a section describing the limitations on fundraising for private organizations. Both guidance documents were accompanied by a memorandum from the Acting Deputy Administrator to DEA senior managers describing the documents and the need for DEA employees to operate within the rules pertaining to fundraising and interacting with outside entities. The cover memoranda also directed the senior managers to distribute the guidance documents to their employees and ensure that their employees followed the rules. The cover memoranda and accompanying guidance documents were distributed by e-mail to DEA senior managers, including [REDACTED] Special Agent in Charge (SAC) [REDACTED]

In addition, on August 27, 2015, the two guidance documents were sent to all DEA employees, including [REDACTED] through an e-mail with the subject "Fundraising in the Workplace." The e-mail summarized the restrictions associated with fundraising in the workplace that were described in detail in the guidance documents.

The DEA Chief Counsel's Office provides annual training to all of its Division Counsel in September of each year. While the topics covered in the annual training vary from year to year, in 2016 the Chief Counsel's Office provided training on the fundraising regulations. Walter Travis, who became the

Division Counsel to the ██████████ Division in January 2016, attended this training.<sup>6</sup> Furthermore, all SACs, including ██████████ were also provided with training regarding the fundraising rules in November 2016 after several violations of the fundraising rules came to then-DEA Administrator Charles Rosenberg's attention.

### Investigative Findings

In 2000, Diversion Coordinator Brooke Kingsley, with the permission of then-SAC ██████████, began operating a "store" in the ██████████ Division's recreational area (RA).<sup>7</sup> At SAC ██████████ suggestion, Kingsley contacted the SBF's ██████████ who agreed to provide funds to start the store, which sold t-shirts, mugs and hats. Kingsley told us that from the start, all proceeds from merchandise sales were going to support the SBF.

The store operated in support of the SBF until approximately January 12, 2017, when ██████████ Division Counsel Travis brought the store's existence to the attention of the DEA Chief Counsel's Office. Travis told us that a DEA employee who had been running the store inquired if the store could stop sending proceeds to the "DEA Survivors Benefit Fund" and use it instead to fund office events. Travis told us that this was when he first learned the store was giving money to the SBF. He also told us that he knew it was impermissible to raise funds for charitable organizations, but, due to "DEA" being part of the SBF's name, he was confused whether it was a DEA-run program or a private charity.<sup>8</sup> This confusion prompted him to contact the Office of Chief Counsel for guidance.

Travis was advised by Senior Attorney and DEA Deputy Ethics Official Gregory Carroll, from the Office of Chief Counsel, that the ██████████ Division should immediately stop sending proceeds to the SBF because it was impermissible to fundraise on behalf of charitable organizations.<sup>9</sup> Based upon this instruction, Travis recommended to ██████████ SAC ██████████ that he immediately shut down the store. According to both ██████████ and Travis, ██████████ did so.

██████████ told the OIG that he knew that the proceeds from the store were going to the SBF and that he had "no problem at all" with that because "it never in [his] wildest dreams occur[ed] to [him] that supporting [the SBF] in

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<sup>6</sup> Walter Travis is a pseudonym.

<sup>7</sup> Brooke Kingsley is a pseudonym.

<sup>8</sup> Our understanding is that the DEA is in the process of addressing the SBF's use of the DEA's name, as well as the DEA shield and seal, because of the confusion surrounding whether the SBF has an official affiliation with the DEA.

<sup>9</sup> Gregory Carroll is a pseudonym.

any capacity could be wrong.” He stated further that it “never occurred” to him that the store was violating the fundraising rules.<sup>10</sup>

Travis stated that [REDACTED] the SBF’s [REDACTED] called him on the day the store was shut down and threatened to sue the DEA. Travis also told us that he recommended to [REDACTED] that the merchandise be locked in a supply closet and [REDACTED] agreed. Travis maintained possession of the closet’s key.

[REDACTED] told us that immediately after the store was shut down, [REDACTED] called him and told [REDACTED] that he ([REDACTED] could use the unsold merchandise elsewhere.<sup>11</sup> According to Travis, [REDACTED] came to him and took possession of the key to the supply closet. [REDACTED] stated that he later gave [REDACTED] four or five boxes of merchandise from the supply closet because [REDACTED] could use items for “other [SBF] reasons outside of the division.”

### Conclusions and Recommendations

Based on the foregoing, we concluded that the [REDACTED] Division operated a store for many years for the sole benefit of the DEA SBF in contravention of federal ethics regulations. Furthermore, despite the Chief Counsel’s Office issuing guidance in 2015 to all DEA employees, including SAC [REDACTED] and training of all DEA division SACs, including [REDACTED] in November 2016 regarding the rules and regulations relating to fundraising in the workplace, [REDACTED] did not appreciate that his division was acting in contravention of the fundraising rules by operating the store. However, when Travis advised [REDACTED] of the violation, [REDACTED] acted promptly to shut down the store and cease the division’s improper fundraising for the SBF.

Based upon [REDACTED] interactions with SBF [REDACTED] and the DEA’s apparent relationship with the SBF, it appears that other DEA divisions may currently be operating similar stores for the benefit of SBF. It is improper for DEA employees to operate any stores for the purpose of benefitting the SBF or other similar entities. Consequently, the OIG makes the following recommendations:

1. The DEA should determine whether any of its field divisions are currently operating “stores.”
2. The DEA should determine if any identified “stores” are providing the proceeds from sales to the SBF or similar organizations.
3. If proceeds from the sales are being provided to the SBF or similar organizations, the DEA should direct those stores to immediately take action to comply with federal regulations.

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<sup>10</sup> [REDACTED] became the SAC in [REDACTED] in 2011.

<sup>11</sup> [REDACTED] told us that he knew [REDACTED] for 25 years prior to this telephone call.

4. The DEA should draft and implement a policy regarding the operation of division "stores" to ensure that stores are operating within the bounds of the law, such as incorporating as a not-for-profit entity, establishing a board of directors, and adopting written by-laws.

We request that the DEA advise us within 60 days of the date of this memorandum of any actions the Department has taken or intends to take regarding the issues discussed in this memorandum. If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435.


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