



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT ADVISORY MEMORANDUM

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DECEMBER 2022

Recommendation That ATF Add to Its Existing Schedule B Policies, Practices, Guidance, and Training a Policy That Specifically Addresses the Recruitment of Friends and Relatives To Ensure That ATF's Recruitment Policies and Practices are Consistent With, and Adequately Notify ATF Employees of, Applicable Merit-Based Hiring Principles and Federal Ethics Regulations

OVERSIGHT AND REVIEW DIVISION



December 13, 2022

Management Advisory Memorandum

To: Steven Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

From: Michael E. Horowitz
Inspector General

Subject: Recommendation That ATF Add to Its Existing Schedule B Policies, Practices, Guidance, and Training a Policy That Specifically Addresses the Recruitment of Friends and Relatives To Ensure That ATF's Recruitment Policies and Practices are Consistent With, and Adequately Notify ATF Employees of, Applicable Merit-Based Hiring Principles and Federal Ethics Regulations

The purpose of this memorandum is to advise you of concerns the Department of Justice (DOJ) Office of the Inspector General (OIG) has identified regarding a lack of clear procedures, policies, guidance, and training concerning the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Schedule B recruitment process for Special Agents. Specifically, the OIG has discovered that, while it is common for ATF employees to recruit from among friends and family for Special Agent positions, ATF does not provide employees any guidance or training concerning avoiding potential ethics or merit-based hiring issues that can arise at the recruitment stage. We make one recommendation to address this concern.

Relevant Authorities

In 2013, the Office of Personnel Management (OPM) granted ATF Schedule B excepted service appointing authority (Schedule B hiring authority) to recruit and hire Special Agents. Schedule B permits agencies specifically authorized by OPM to bypass the competitive examining process to fill positions "for which it is impracticable to hold open competition or to apply usual competitive examining procedures."¹ Under Schedule B, an agency can perform targeted recruitment to ensure that it has a pool of qualified applicants who possess required skills and characteristics or otherwise meet the agency's specific mission needs. Schedule B hiring authority does not, however, exempt an agency from complying with the federal merit systems principles set forth in 5 U.S.C. § 2301. Accordingly, agencies that utilize Schedule B hiring authority are still bound to ensure that their hiring practices comply with those principles and that their employees participating in and conducting Schedule B hiring not violate any of the prohibited personnel practices set forth in 5 U.S.C. § 2302, including the prohibition on granting any preference or advantage not authorized by law for the purpose of improving or injuring one's prospects for employment, 5 U.S.C. § 2302(b)(6), and the

¹ 5 C.F.R. § 213.3201(a).

prohibition on appointing, promoting, or advocating for the appointment or promotion of a relative, 5 U.S.C. § 2302(b)(7).² Additionally, ATF employees, like all Executive Branch employees, are obligated to comply with the Standards of Ethical Conduct set forth in 5 C.F.R. Part 2635, including the standard requiring employees to act impartially, 5 C.F.R. § 2635.502, and the standard prohibiting the use of public office for the private gain of oneself or another, 5 C.F.R. § 2635.702.

The Issue

As part of its targeted recruitment efforts under Schedule B, ATF encourages its employees to act as informal recruiters to ensure a qualified and diverse applicant pool. The OIG has learned that it is common for ATF employees performing their recruiting duties to recruit from among family and friends. Recruitment from among family and friends is not in and of itself improper. ATF has mechanisms to ensure that individuals without a personal connection to an ATF employee can still apply to and be hired at ATF. The ATF website provides interested applicants contact information for each field division's recruiter; ATF recruiters also regularly attend conferences and events and host informational sessions for potential applicants. Moreover, recruitment at ATF only gets an individual into the pool of prospective applicants; the person recruited must still pass a number of hurdles to be hired at ATF, including submitting a formal application and successfully completing a Physical Task Test, panel interview, written test, polygraph examination, and background investigation. Additionally, ATF requires employees participating in a panel interview or making selection decisions to sign a form attesting that they are not related to any applicant they are interviewing or hiring; DOJ policy also requires that applicants to any DOJ component sign a certification disclosing any relatives who work for the Department. These measures serve to ensure that ultimate hiring decisions at ATF comply with federal law prohibiting nepotism.

Nevertheless, even if the ultimate hiring decision is free of nepotism, recruitment of friends and family can, in some circumstances, potentially give rise to issues under the federal merit-based hiring laws or the Standards of Ethical Conduct. For example, an ATF official's statement endorsing or recommending the candidacy of a family member he or she is recruiting could potentially constitute improper advocacy of the relative's appointment in violation of 5 U.S.C. § 2302(b)(7), even if the official is not the ultimate decision maker or otherwise participates in the relative's hiring. Similarly, recruiting and recommending friends or family members for employment could, in some circumstances, conceivably create an appearance that the employee is using his or her public office for his or her friend's or relative's private gain or giving that friend or relative preferential treatment, in possible violation of the Standards of Ethical Conduct.³

Conclusions

It is the OIG's understanding that ATF does not have a written policy governing the recruitment of friends and family, nor does it provide employees engaged in recruiting activities with any specific process to follow when recruiting a friend or family member. It is also the OIG's understanding that, while ATF trains its employees about avoiding nepotism issues at the interview and selection stage, ATF does not provide any training or guidance to employees regarding potential ethical, appearance, or merit-based hiring issues that can arise during the recruitment stage. The OIG is concerned that, in the absence of such a policy, process, or guidance, ATF employees may not understand how the federal merit principles and ethics standards

² See generally 5 U.S.C. § 2302(a)(2)(B) (defining covered positions protected against prohibited personnel practices to include Schedule B excepted positions); 5 U.S.C. §§ 2302(c)(2)(A)-(B) (making agency heads responsible for "preventing prohibited personnel practices" and "complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management").

³ See 5 C.F.R. §§ 2635.101(b)(7)-(8), 2635.502, 2635.702.

apply at the recruitment stage and could unwittingly run afoul of those principles and standards in performing their Schedule B recruitment duties.

Recommendation

The OIG recommends that ATF review its existing Schedule B policies, practices, guidance, and training and add to them a policy that specifically addresses the recruitment of friends and family members to ensure that ATF's recruitment policies, practices, guidance, and training are consistent with, and adequately notify ATF employees of, the applicable merit-based hiring principles and ethics regulations.⁴

If you have any questions or would like to discuss the information in this memorandum, please contact me at (202) 514-3435 or Sean O'Neill, Assistant Inspector General for Oversight and Review, at (202) 514-9539.

cc: Bradley Weinsheimer
Associate Deputy Attorney General
Department of Justice

Daniel Board
Chief of Staff
Office of the Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

⁴ We provided a draft of this memorandum to ATF for its review, as is our ordinary practice. ATF did not have any comments or suggested changes. Accordingly, the OIG considers the recommendation to be resolved and requests that ATF update the OIG within 90 days on actions it has taken to address the recommendation.