

An Investigation of Travel Reimbursements in Connection with the INS's Operation Safeguard



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EXECUTIVE SUMMARY

I. Introduction

In 1999, Operation "Safeguard 99" (hereinafter referred to as Operation Safeguard) was established in the Tucson Border Patrol Sector as part of the Immigration and Naturalization Service's (INS) National Strategy to secure control of the southwest border. This Tucson Sector initiative was first launched in 1994, on a much smaller basis, as Operation "Safeguard 1994." Similar operations to control illegal crossings in other Border Patrol sectors, such as in the El Paso and San Diego sectors, eventually shifted the flow of illegal crossing into the Tucson Sector's area of operations. Therefore, as part of Operation Safeguard 99, many Border Patrol resources were redirected in 1999 to support the Tucson Sector's prevention and interdiction efforts.

As a result, since 1999 the INS has detailed thousands of agents and other personnel to the Tucson Sector, and to Douglas, Arizona in particular, to participate in the operation. The number of Border Patrol agents (BPA) who were detailed to the Tucson Sector varied from month to month, but averaged approximately 100 per month.

The rapid increase of BPAs in southern Arizona presented a significant stimulus to that economy, and local lodging providers welcomed the increased business. Despite the large number of Border Patrol agents requiring lodging on a regular basis, however, the INS did not seek to negotiate, as an agency, a competitive lodging rate with area hotels and apartment complexes. Rather, the detailed BPAs were left on their own to secure whatever lodging arrangements they could find.

In an effort to obtain and ultimately retain the agents' business, many local lodging providers offered special incentives for the agents to rent lodging from them. These incentives included food vouchers, credits at restaurants, complimentary meals, gym memberships, and in some cases cash rebates. Until after the complaints that were the basis for this investigation arose, however, INS management did not provide policy or ethical guidance to its employees concerning the incentives that the lodging providers offered. In our investigations, we also found that in some cases supervisory Border Patrol agents rented rooms in their homes to other agents or purchased rental properties to rent to agents.

Two Border Patrol agents who were permanently assigned to the Douglas Border Patrol Station reported allegations of misconduct regarding these lodging benefits to United States Congressman Jim Kolbe, whose district covers the Douglas area. The allegations concerned four areas: 1) that some detailed Border Patrol agents had committed

travel voucher fraud in connection with the lodging benefits; 2) that Supervisory Border Patrol Agents had rented properties to subordinate agents; 3) that an INS Office of Internal Audit (OIA) agent, who the INS had assigned to investigate these allegations, had refused to adequately pursue the matter; 4) and that Border Patrol managers in the Tucson Sector retaliated against the complainants for reporting the allegations.

In September 2001, Congressman Kolbe requested that the Department of Justice's Office of the Inspector General (OIG) investigate the complainants' allegations and the circumstances surrounding the detailing of agents in support of Operation Safeguard. He further asked that the OIG examine the types and legality of the incentives that the lodging providers offered to those agents.

In response to these complaints, the OIG opened this investigation. This report summarizes our findings.

II. The Scope of the OIG Investigation

To investigate these allegations, we initially obtained a listing from the INS Western Region identifying all employees who were detailed to Operation Safeguard. We then requested that INS locate and provide copies of all available travel vouchers submitted by those employees who were detailed to the Tucson Sector during Fiscal Years 2000 and 2001.¹ (Our request is included as Exhibit 1.) Thereafter, we obtained and audited 3045 travel vouchers from the INS Finance Center in Dallas, Texas for Fiscal Years 2000 and 2001 covering those individuals who were detailed to all Tucson Sector Border Patrol stations in support of Operation Safeguard.²

We analyzed and inputted the information contained in these 3045 vouchers into an OIG database. From these vouchers, we determined that 1,436 INS employees were detailed to the Tucson Sector in support of Operation Safeguard during Fiscal Years 2000 and 2001. In addition, we identified 250 lodging providers where detailed INS employees stayed during this period.

Through OIG subpoenas, we obtained lodging receipts and rental contract records from the largest lodging providers. We also reviewed records maintained at the Cochise County Tax Assessor and Recorder's

¹ Our review covered vouchers during the period from October 1, 1999 to September 30, 2001. Because we received the allegations in 2001, we decided to focus our review on the two-year period prior to Congressman Kolbe's request to the OIG.

² We believe that the INS's Tucson Sector cooperated fully with our review. It provided access to records and facilitated our interviews of key witnesses. Similarly, the San Diego Sector, from where the bulk of the agents had been detailed, also greatly assisted us in this investigation.

Offices to ascertain the ownership of rental properties. In addition, we reviewed INS documents relating to Operation Safeguard as well as receipts lodging providers maintained in the course of their rental businesses.

We conducted many interviews in connection with this investigation. In total, the OIG interviewed more than 100 BPAs, including agents who were detailed to the Tucson Sector, many of their supervisors, and Border Patrol management officials. The OIG also interviewed the INS's Office of Internal Audit (OIA) agent who conducted the INS's original investigation into the allegations, as well as his supervisors.

In addition, we interviewed 14 lodging providers who provided much of the lodging to the detailed Border Patrol agents in the Douglas and Sierra Vista, Arizona areas.³ Due to the large number of lodging providers, we submitted a questionnaire to 70 providers, representing a sample of the remaining lodging providers who we did not interview. In addition, the OIG identified and interviewed seven INS employees or spouses of INS employees who provided lodging for detailed agents.

We presented the results of our investigation, including the potential violations of law, to the U.S. Attorney's Office in Tucson and to the Public Integrity Section of the Department of Justice's Criminal Division for prosecutive decisions. In most cases, they declined criminal prosecution. However, the OIG continues to work with the Tucson U.S. Attorney's Office and the Internal Revenue Service on several allegations that could lead to prosecution of INS employees for fraud, false statements, or tax evasion violations.

The OIG's Office of General Counsel (OGC), in consultation with INS's Ethics Officer and the General Service Administration, prepared a legal opinion regarding acceptance of the various incentives that the lodging providers offered to renters. That memorandum is included as Exhibit 2.

During the two-year period we reviewed, it appeared that 114 travel voucher claims were erroneously overpaid, by a total of approximately \$16,000. Our review also revealed that there appeared to be little oversight of the voucher approval process or questions raised concerning the amounts claimed. We referred this issue to INS OIA for consideration of an internal audit of that area. We also referred other BPAs' travel vouchers that were identified as indicating possible fraud to INS OIA for follow-up and any corrective action.

³ Sierra Vista is 51 miles northwest of Douglas. Both are located in Cochise County.

The following sections describe the results of our investigation. We first offer an overview of Operation Safeguard, its purpose and implementation strategy, its proposed duration of activity, and the need for increased detailing of agents to the Douglas area. We then describe benefits provided by various lodging providers in the Douglas area to the detailed Border Patrol agents. Next, we describe the issues concerning the rental by supervisory Border Patrol agents to the detailed agents. We then briefly discuss the allegations of retaliation against the complainants who raised these complaints. Finally, we provide our conclusions and recommendations.

III. Background

A. Operation Safeguard 99

In October 1993, Silvestre Reyes, who was then the Chief of the El Paso Border Patrol Sector, initiated Operation Hold the Line in the El Paso Sector. This program deployed numerous Border Patrol personnel along the border in an effort to significantly reduce illegal border crossings in the area.

Drawing on the El Paso initiative, in August 1994 the Attorney General and then-INS Commissioner Doris Meissner agreed to establish a border enforcement program called the National Border Strategy. This was a multi-phase, multi-year enforcement strategy designed to secure control along the southwest border. The strategy changed the Border Patrol's emphasis on apprehending illegal entrants to an emphasis on preventing their crossing the border in the first place. As part of the new strategy, the Border Patrol staged many agents in fixed positions along the border. The Border Patrol also directed attention to the points of entry into the United States, the primary staging areas, and the egress away from the border once illegal entry was made. The strategy was designed to shift crossings to remoter areas where it was harder to cross, thereby deterring crossing in total.

In October 1994, the San Diego Sector initiated Operation Gatekeeper as part of the new strategy. In August 1997, Operation Rio Grande was initiated in the McAllen Sector. In each of these operations, the Border Patrol augmented the sector's resources by detailing into the sector agents and personnel from other areas.

In January 1999, Operation "Safeguard 99" was established in the Tucson Sector. Although originally formed in 1994 at a much smaller

level,⁴ the operation was expanded in 1999 to strengthen Tucson Sector's enforcement operations.

The Tucson Sector is composed of eight stations – Ajo, Casa Grande, Douglas, Naco, Nogales, Sonoita, Tucson, and Willcox. The sector extends across 261 miles of Arizona's southern border, from the eastern edge of Yuma County, Arizona to New Mexico. The Tucson Sector separated its geographic area into three priority target quadrants – Nogales, Douglas, and Ajo and the western desert.

Based on the historically high volume of illegal crossers, Phase I of Operation Safeguard 99 focused on the Nogales area. The INS formed deterrence units, tactical interdiction units, tactical response units, operation disruption units and immigration checkpoints along various roadways leading from the border. The success of the INS's strategy involved (1) gaining control of the area, (2) maintaining control of the area, and (3) expanding to other areas as the illegal flow of entry shifted.

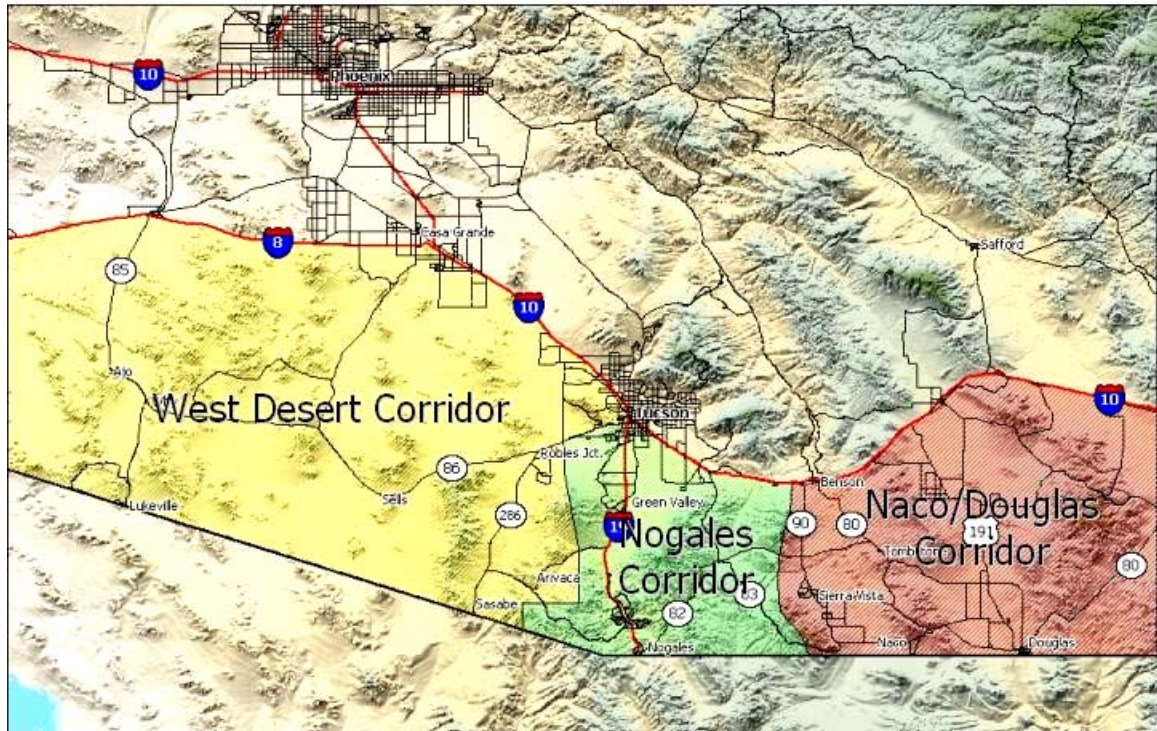
As noted above, this strategy was a resource-intensive effort, requiring many additional Border Patrol personnel. Because Border Patrol employees do not sign Mobility Agreements obligating them to accept reassignments based on the needs of the Border Patrol, management was unable to involuntarily transfer agents from other sectors to the Tucson Sector. Instead, agents from other sectors were detailed for temporary assignment, normally for 30 days, but in many cases for much longer periods.

When Operation Safeguard 99 commenced in the beginning of 1999, the Nogales Station had a permanent staff of 80 agents. A significant number of personnel, equipment and resources were detailed from the INS's Western Region, primarily from the San Diego Sector, to the Tucson Sector. The Resource Support section of Operation Safeguard 99's plan called for 125 INS employees to be detailed to the Tucson Sector each month.

As part of Operation Safeguard 99, the Western Region drew on the San Diego Sector's resources because that sector had gained and maintained control of its area of operations. In May 1999, approximately 50 agents were detailed to the Nogales Station on a monthly basis. As the operation expanded, additional resources were sent to that area.

⁴ Between 1994 and 1999, enhanced enforcement operations in the INS San Diego and El Centro, California Sectors caused illegal entrance patterns and smuggling operations to shift from southern California into Arizona. As a result, Operation Safeguard 99 greatly expanded the scope of the INS operations that Operation Safeguard had begun five years earlier.

Toward the end of calendar year 1999, Tucson Sector management believed that it had gained an acceptable amount of control within the Nogales area. It therefore shifted its attention to the Naco/Douglas corridor.



In January 2000, the Tucson Sector began Phase II of Operation Safeguard 99 at the Douglas Station. At the time, approximately 350 agents were permanently assigned to that station, due to an increase in the hiring of BPAs. In addition, approximately 100 agents each month were detailed to the Douglas Station.

As the Tucson Sector determined that it had an acceptable degree of control of Naco/Douglas corridor, Phase III was established in the Ajo and western desert area, which encompasses 120 miles of the border. This began in June 2001 and increased in the summer of 2002.

Like other sectors' operations in support of the INS's National Strategy, Operation Safeguard 99's proposed duration was contingent upon the Tucson Sector obtaining an acceptable degree of control of illegal immigration within its sphere of operation. Therefore, its plan did not set a timetable for its eventual termination, and Operation Safeguard is continuing.

B. Selection of agents and handling of travel arrangements

The Tucson Sector in concert with the Western Region determined the number of personnel and amount of resources that were needed to continue the operation. In the overwhelming majority of cases, the Western Region required the San Diego Border Patrol Sector to identify its personnel for detail to the Tucson Sector.

The San Diego Sector, in agreement with the National Border Patrol Council, formed "Detail Management Teams" (DMT) at its stations. The DMTs, which included union officials, selected personnel from their stations to be detailed to Tucson. The selection criteria included seniority, entry of duty dates, previous details, and training. Some agents told us that they "volunteered" for their otherwise mandated detail to the Tucson Sector. There appeared to be little input from station management about who was selected or the length of their detail.

Normally, the agent's detail to the Tucson Sector was for 30 days. However, agents were often detailed from their permanent stations to the Tucson Sector for longer periods of time, some for more than a year. In fact, we found instances where agents moved out of their permanent homes, placed their personal effects in storage, and purchased homes in the Douglas area.

The agents were normally given advance notice ranging from two days to one month of their detail. The degree of preparation the agents received prior to their detail varied. Some stations supplied an extensive information packet to agents prior to departure, containing such information as the names of hotels and apartments in the areas, a travel order and voucher checklist for preparing a voucher using the INS's Travel Manager computer program, as well as other materials. Some agents recall seeing pamphlets posted on their stations' bulletin boards advertising lodging that was available in the Douglas area. Other stations simply informed the agents that they had to report to a particular station in the Tucson Sector and left the logistics to those agents.

Most agents told us that they were left on their own to make lodging arrangements. We found that agents who were on their first detail to Douglas and were searching for housing often relied upon the advice of other agents who had preceded them.

In the beginning of the Douglas phase, the agents stayed primarily at the Gadsden Hotel, the largest commercial provider in the Douglas area. The Gadsden Hotel also offered a "meal voucher" program (described below), which made it attractive to stay there. Over time,

other commercial and private lodging facilities in the Douglas and Sierra Vista areas began offering other programs as an incentive to attract Border Patrol lodgers.

Upon arrival at the Douglas Station, the agents were given an area orientation briefing. Agents who we interviewed stated that some lodging providers handed out flyers and other promotional materials to the agents during their breaks. Those activities occurred outside the building where the briefings were being held.

With regard to the completing and processing of their travel vouchers, the agents explained that other than the initial training they received at the Border Patrol Academy, they did not receive any training specific to the Operation Safeguard detail. Some agents, as required by INS policy, completed their travel vouchers using the INS's Travel Manager database program, which was installed on some station's computer systems. When the program was not working or not installed on the computer system, the agents gave their receipts and travel orders to their station's administrative clerk, who then completed the vouchers.

Some Supervisory Border Patrol Agents (SBPA) accompanied detailed agents from the San Diego and other sectors to the Tucson Sector for the operation. Those SBPAs had direct supervision for the detailed agents and wrote the detailed agents' performance evaluations. Field Operations Supervisors, who were permanently assigned to Tucson Sector stations, had overall supervision for permanent and detailed agents working in those stations.

Aside from their normal duties, a detailed SBPA was given the additional duty to review and approve travel vouchers for the detailed agents. In some cases, an SBPA at an agent's home station reviewed the travel vouchers after the administrative staff had filled them out. We were informed that, normally, the SBPA merely glanced through the voucher and then signed it. At times, the SBPA had to review and approve vouchers from an entire shift of detailed agents. The sheer volume of vouchers being processed left little time for an in-depth review of them. After the vouchers were approved, they were returned to the agents, who in turn sent them to their permanent station or to the Finance Center.

III. Findings

The OIG investigated allegations that Border Patrol agents who were detailed to the Tucson Sector in support of Operation Safeguard were obtaining various "kickbacks" as an incentive to stay at various lodging facilities in the Douglas and Sierra Vista areas, and that the

agents did not deduct a corresponding amount from their lodging or their Meals and Incidental Expense (M&IE) claims when they filed their travel vouchers. The incentives included cash, food vouchers, free meals, and memberships to gyms. It was further alleged that SBPAs who were assigned to the Douglas Station rented homes to subordinate agents.

The OIG coordinated this investigation with the U.S. Attorney's Office in Tucson, Arizona. The OIG also received information and assistance from the INS, the Office of Government Ethics, the Office of Special Counsel, and the General Services Administration.

A. Incentives offered by lodging providers to detailed agents

During the time period we reviewed, the maximum daily rate was \$55 for lodging and \$30 for M&IE for the Douglas and Sierra Vista area. The following describes the lodging rates and the incentives offered by various lodging providers to detailed Border Patrol agents in the Douglas and Sierra Vista areas.

1. Windemere Hotel

A review of the travel vouchers identified 631 instances where a Border Patrol agent stayed at this commercial hotel in Sierra Vista, Arizona. An OIG interview of Kim Kaiser, the manager of the Windemere Hotel, revealed that the hotel's single room rate was \$55 per day plus tax. Kaiser noted that the hotel offered every guest a complimentary breakfast buffet and beverages at a nightly happy hour. It also gave extended-stay BPAs and other government employees a free membership at a local health club. Kaiser equated those services to those offered at the Embassy Suites Hotels.

The OIG interviewed a sampling of 15 agents who rented at this hotel. They advised us that they accepted the incentives that were offered and did not reduce their claim for reimbursement. They said that they paid the full per diem lodging rate and received receipts reflecting their payments.

The OIG OGC's legal opinion, based on a review of General Services Administration regulations, indicates that federal employees can accept complimentary meals in this circumstance without that incentive affecting their per diem. We therefore concluded that the BPAs who stayed at this hotel could accept the breakfast buffet and happy hour beverages without taking corresponding reductions in their claims for per diem entitlements. It was also acceptable for the agents to use the gym, as there was no extra charge imposed on the government by their doing

so. This benefit falls in the category of a promotional benefit the government could not use.

2. Gadsden Hotel

A review of the travel vouchers showed that 293 detailed Border Patrol employees had 455 instances of lodging at this commercial hotel, located in Douglas. An OIG interview of Robin Brekhus, the owner/manager of the Gadsden Hotel, revealed that the hotel's standard single room rate was \$55 per day plus tax. Brekhus offered that rate to every lodger. Based on availability, Brekhus initially gave state and federal employees an upgrade to a suite at no additional cost. With the influx of lodgers to the Douglas area, Brekhus was unable to offer all the government employees this upgrade.

Brekhus discovered, however, that potential lodgers were staying at other hotels in the area that offered a complimentary breakfast and nightly happy hours. Consequently, to compete with those facilities, Brekhus provided BPAs and other extended-stay lodgers a \$15 per day credit for use toward the purchase of meals in the Gadsden Hotel's restaurant. Brekhus advised that the \$15 per day credit was available to all government employees, senior citizens, tour groups, and movie groups. Brekhus noted that the \$15 was a credit, not cash, which was applied toward the lodger's restaurant bill, not toward the purchase of other items in the hotel or towards reducing the daily room rate. A BPA who did not eat meals in the hotel received no benefit from the credit. Brekhus gave the BPAs a receipt reflecting that they paid \$55 per day for lodging.

Based on an OIG subpoena, Brekhus released documents concerning BPAs who rented at the hotel and the amount of money they individually had credited to their restaurant bills. (Water damage in the basement of the hotel where the records were stored prevented Brekhus from providing information regarding 53 of the 455 instances.) A review of the 402 records that were available detailed that the individuals spent a total of \$587,864.94 in lodging costs and that the hotel provided \$121,586.99 in restaurant credits.

Our interviews of a sample of 22 agents who stayed at this hotel revealed that they all paid the full per diem lodging rate, whether or not they took advantage of the credit and ate their meals in the hotel, and that they did not deduct from the reimbursement claims any credit for meals.

The OIG OGC's legal opinion concluded that these meal credits could be characterized in two ways. First, they could be considered the

equivalent of a complimentary meal. As discussed above in connection with the Windemere Hotel, the government regulations permit employees to accept complimentary meals without requiring a reduction to their M&IE allowance. Alternatively, the meal credits could be considered promotional material. Under the regulations applicable at the time,⁵ employees were permitted to retain promotional materials if the government could not use them, no future benefit was forfeited by their acceptance, and they could not be redeemed for cash value. Because the meal credits satisfied these criteria, the OGC concluded the agents were entitled to retain the credits and no reduction to their M&IE was required.

3. Mountain Vista Apartments and Supermarket Coupons

A review of the travel vouchers identified that 48 detailed individuals had 206 instances of lodging at this apartment complex, located in Sierra Vista, Arizona. An OIG interview of [DELETED] of the Mountain Vista Apartments, revealed that she normally charged \$1,050 per month (\$35 per day) for a one-bedroom furnished apartment. [DELETED] advised that she determined from her inquiries at the Windemere Hotel that the facility offered guests a complimentary breakfast and nightly happy hour. [DELETED] said that to remain competitive with that hotel, she offered Fry's Supermarket food coupons as an incentive program to BPAs, to other government employees, and to military personnel.

[DELETED] charged the BPA's credit card the maximum allowable lodging rate of \$55 per day. In turn, [DELETED] gave the BPAs up to \$10 per day (\$300 for a 30-day stay) in Fry's Supermarket food coupons. The coupons were in \$5, \$10, \$20 and \$50 denominations. [DELETED] paid the supermarket the face value for those coupons. The BPAs could use those coupons, like cash, to purchase items at the supermarket. Regardless of the face value of the coupons, the BPAs could obtain from the supermarket a maximum of \$4.99 in change. At the end of their stay, [DELETED] gave the BPAs a receipt reflecting that they had paid the full \$55 per day for lodging.

If [DELETED] had an adequate supply of apartments that she could have rented to agents at \$35 per day, by charging the agents \$55 per day and giving some of them up to \$10 per day in food coupons she realized a \$10 per day profit over the rate that she would have normally charged renters.

⁵ The rule was recently changed to allow government travelers to make personal use of promotional benefits earned on official travel.

Based on an OIG subpoena, [DELETED] released documents and rental contract information to us. After reviewing those materials and comparing them with travel vouchers that were submitted by BPAs, we determined that 48 agents rented during the period under review. The records conclusively identified that 33 agents received a total of \$20,940 in food coupons. The average that the agents received was approximately \$400. The maximum received by any agent was \$2,700 and the minimum was \$80. [DELETED] had no information to indicate that the remaining 15 agents received any food coupons. All agents claimed the maximum lodging and M&IE entitlements on their travel vouchers and they were reimbursed based on their claims.

Our interviews of a sample of 6 agents who rented at this apartment determined that they paid the full per diem lodging rate and that they received a receipt reflecting their payments. They also used the coupons to purchase food and other items at the supermarket. None of the agents stated that they turned in any of the coupons to the supermarket merely to get cash back.

The OIG OGC's legal opinion determined that unlike the meal credit offered at the Gadsden Hotel, the supermarket coupons should not be equated to a complimentary meal because their use was not limited to the purchase of food items. Rather, the coupons had to be considered promotional materials. Moreover, because the coupons were not tied to any particular stay at the apartment complex or to any particular guest and therefore theoretically could have been used by the INS to reduce the cost of sending travelers to the area (since the agents could receive some cash by using them), the OGC concluded they were not promotional materials that could be retained under the regulations. Instead, the agents should have turned them over to the INS.

The OGC opinion noted, however, that the regulations governing promotional materials assume that the employing agency has established a procedure by which it will receive promotional materials from its employees. 41 CFR, 301-53.1(b). We determined that the INS neither provided the agents with any guidance about the use of the coupons nor made known to them any such procedures. Accordingly, we fault the INS management for failing to take control of the situation rather than the individual agents who used the coupons.

We also provided these facts to the U.S. Attorney's Office in Tucson for a prosecutive decision. Citing no evidence of criminal intent on the part of either [DELETED], the apartment complex owners, or the agents and a lack of training for the agents in preparing travel vouchers, the U.S. Attorney's Office declined criminal prosecutive interest in this matter.

4. Southern Arizona Realty Company

A review of travel vouchers identified that 37 detailed agents rented apartments or homes through this commercial real estate firm, located in Douglas, Arizona. An OIG interview of [DELETED] of the Southern Arizona Real Estate Company, revealed that he initially gave presentations to detailed BPAs at the area orientation briefings.⁶ He passed out advertising flyers and his business cards.

[DELETED] stated that to compete with the \$15 per day credit for meals offered by the Gadsden Hotel he gave the BPAs a \$15 per day reduction toward their lodging. [DELETED] explained that the BPAs effectively paid him only \$40 per day, but that he gave them receipts reflecting that they had paid him the full \$55 per day for their lodging.

During our investigation, [DELETED] became concerned about that business practice and in mid-summer 2001 he discontinued giving a \$15 per day rate reduction for lodging. At that point, similar to the incentive offered at the Mountain Vista Apartments, [DELETED] began providing up to a \$10 per day reimbursement to BPAs through his purchase of Safeway Supermarket food coupons. [DELETED] stated that under his Safeway food coupon incentive program, the BPAs paid him the full \$55 per day for lodging. In turn, [DELETED] gave the BPAs a receipt reflecting that full payment.

Through an OIG subpoena, [DELETED] provided documents describing the BPAs who rented through his firm and the actual amount of money that they paid for lodging.⁷ We identified that 37 agents paid [DELETED] a total of \$74,235, but that they collectively claimed a total of \$87,275 on their travel vouchers. Of those, 18 agents took advantage of the \$15 per day discount credit, and collectively they were reimbursed \$12,725 more than they actually paid [DELETED]. The maximum credit that one agent received was \$3,075 and the least that an agent received was \$150.

Additionally, during our interview, [DELETED] advised us that he gave a total of \$3,585 in food coupons to eight renters. Based on the

⁶ The Douglas Station conducted area orientation briefings for incoming detailed agents. The briefings were initially held at the Gadsden Hotel, since large gatherings could be accommodated there. As the number of detailers increased, however, the briefings were moved to the Army National Guard Armory facility in Douglas.

⁷ We determined, however, through reviews of [DELETED] records, examination of travel vouchers submitted by agents who rented through him, and interviews of those agents that [DELETED] kept incomplete records of his transactions with the renters.

information [DELETED] provided, we determined that the most that one agent received was \$1,080 and the least was \$140. The remaining 11 renters received neither cash nor food coupons. All agents claimed the maximum lodging and M&IE entitlements on their travel vouchers and they were reimbursed based on their claims.

Our interviews of 33 agents⁸ who rented through the Southern Arizona Realty Company described that they paid that company the full \$55 per diem lodging rate. Sometime after they paid the full rate, [DELETED] or his staff gave renters up to \$15 per day in cash back as a comparable incentive to that being offered at the Gadsden Hotel. The agents also advised that [DELETED] discontinued giving cash back to renters and instead offered the lodgers food coupons, which were redeemable at a local supermarket. One agent returned the food coupons believing that if she kept them she would have to deduct their value from her M&IE entitlement.

The OIG OGC's legal opinion determined that the BPAs who accepted the cash rebates from [DELETED] should not have claimed the full lodging allowance of \$55 per day on their travel vouchers. They were entitled to be reimbursed only for the amount they actually paid for lodging, in this case, \$40 per day. The use of the food coupons was deemed promotional items comparable to those offered at the Mountain Vista Apartments discussed above.

We provided these facts to the Tucson U.S. Attorney's Office. Again citing insufficient evidence of criminal intent on the part of the agents and a lack of training for the agents in preparing travel vouchers, the U.S. Attorney's Office declined criminal prosecutive interest in this matter. With regard to [DELETED], the U.S. Attorney's Office stated because he was matching incentives offered by other hotels he could argue that he was simply engaging in the practice of providing rebates to customers. The U.S. Attorney's Office declined prosecution against [DELETED].

5. [DELETED]

[DELETED] is a civilian who rented his four-bedroom home in Douglas, Arizona to agents who were detailed to that area. He charged each agent \$55 per day for lodging. In turn, he offered the renters \$8 per day, in cash, as an incentive for their stay. [DELETED] explained that he intended the money to cover the cost of breakfast, which he, unlike the hotels, could not provide to the renters.

⁸ We determined that four employees had resigned from the INS, and we did not interview them regarding this matter.

In response to an OIG subpoena, [DELETED] released copies of his rental contracts. After reviewing those documents and comparing them with travel vouchers submitted by BPAs, we determined that 27 individuals rented [DELETED] home during the period under review. [DELETED] advised that one agent returned the money to him. Additionally, three BPAs declined [DELETED] offer of cash but opted instead to have [DELETED] stock the refrigerator with food. [DELETED] paid a total of \$4,768 in cash to 23 BPAs. The average payout was \$224.

Our interviews of 24 agents⁹ who rented [DELETED] house determined that they paid him the full per diem lodging rate and they received receipts reflecting their payments. Sometime after paying their rent, [DELETED] placed up to \$8 per day in cash, in stacks, in the house. One stack of money was intended for each renter. Two agents stated that they did not believe it was appropriate to accept the cash, and they declined [DELETED] offer. The stated that instead, [DELETED] stocked the refrigerator with food items prior to the agents' arrival. Another agent advised that he returned the cash because he did not believe that it was appropriate to take the money. The agent asked a co-worker, who was not staying at [DELETED] house, to witness that transaction. The witness confirmed that the renter returned the money.

Similar to the Southern Arizona Realty case discussed above, the OIG OGC's legal opinion was that the BPAs who accepted cash rebates from [DELETED] should not have claimed the full lodging allowance of \$55 per day on their travel vouchers. Rather, they were required to claim only what they actually paid, in this case \$47 per day. The food items that [DELETED] stocked in the refrigerator were deemed to be equivalent to a complimentary meal, which the agents could accept without reducing their claim for per diem reimbursement.

Also reflecting similar reasoning as described in the case above, however, attorneys in the U.S. Attorney's Office declined criminal prosecution in this matter. They cited no evidence of criminal intent on the part of the agents and a lack of training for the agents in preparing travel vouchers. They further noted that [DELETED], like [DELETED], was matching incentives offered by the hotels. They stated that he could argue therefore that he was simply engaging in the practice of providing rebates to customers.

6. Brewery Avenue Designs, Bisbee, Arizona

⁹ We determined during our investigation that three agents who rented [DELETED] home had resigned from the Border Patrol, and consequently they were not interviewed regarding this matter.

We personally interviewed the manager of this lodging facility, which offered apartments to renters. He stated that he charged the BPAs the full per diem lodging rate and that he did not offer them any incentives. We conducted a random sample of agents who rented from this provider, and determined that they paid the full per diem lodging rate and they did not receive any incentives.

7. Gateway Studio Suites, Sierra Vista, Arizona

We personally interviewed the manager of this hotel. She stated that she charged the BPAs the full per diem lodging rate and that she did not offer them any incentives. We conducted a random sample of agents who rented from this provider and determined that they paid the full per diem lodging rate and did not receive any incentives.

8. Motel 6, Douglas, Arizona

We personally interviewed the manager of this motel. She stated that she charged the BPAs the full per diem lodging rate and that she did not offer them any incentives. We conducted a random sample of agents who rented from this provider and determined that they paid the full per diem lodging rate and they did not receive any incentives.

9. Valle Realty, Bisbee, Arizona

We personally interviewed the owner/broker of this real estate company. He said that he managed rental properties in the Douglas and Bisbee areas and that he charged the BPAs the full per diem lodging rate. He did not offer them any incentives. We conducted a random sample of agents who rented from this provider and determined that they paid the full per diem lodging rate and they did not receive any incentives.

10. Personal Interviews of selected Lodging Providers

We mailed a survey to 70 other lodging providers requesting their assistance with this investigation. Based on the providers' interaction with detailed agents, we randomly selected 10 lodging providers for personal interviews. During our interviews, we expanded on the questions posed in our survey. The following is the list of providers who we interviewed.

Provider

Isabel Combel, 1502 8th Street, Douglas, Arizona

Eli Properties, 1509 Mission Drive, Douglas, Arizona

Carlos Fernandez, 2075 11th Street, Douglas, Arizona

George Haloulos, 4719 Territorial Loop, Sierra Vista, Arizona
Esther Goff, 5077 E. Goldfinch Circle, Sierra Vista, Arizona
Linda Marquez, 3622 Camino el Jardin, Sierra Vista, Arizona
Provider

Rayna Nichols, 2335 11th Street, Douglas, Arizona
Carmen Rodriguez, 2065 13th Street, Douglas, Arizona
Rudy Sierra, 2514 E. 11th Street, Douglas, Arizona
Lori Sanchez, 100 Golflinks Road, Douglas, Arizona

The properties included apartments, homes, and trailers. We determined from our interviews that all these providers charged each agent \$55 per day for lodging. Except for [DELETED], no provider offered any incentives. [DELETED], a former assistant manager of the Mountain Vista Apartments, estimated that she gave a total of \$2,400 in food coupons to the six agents who rented from her.

11. Questionnaires and Surveys

Due to the large number of lodging providers identified in our two-year audit of agents who were temporarily detailed to Operation Safeguard, we did not interview all of them. We supplemented our interviews with a letter and survey questionnaire that was sent to 70 selected lodging providers. This sample was taken from the entire lodging list we compiled, as broken down into groups represented by the number of instances each rented to a detailed agent. The number of letters sent to the providers in each group was proportional to the amount of business they did with the agents. The questionnaire asked them to identify, among other things, their lodging rates and any special incentives that they offered their renters.

The majority responded that they charged the maximum lodging per diem rate and did not offer any incentives. Fourteen establishments offered a complimentary breakfast and nightly happy hours. Seventeen others offered food coupons or meals in their restaurants. Our review determined that these lodging providers gave \$61,283 in food coupons to BPAs who rented at their locations.

<u>Provider</u>	<u>Amenity</u>
AmeriSuites, Tucson	None
Angius Hideaways	None
AV Properties	Cash rebate
Arizona Copper Hills Realty	Food coupons
Ajo Realty	Food coupons
Baymont Inn and Suites	None

<u>Provider</u>	<u>Amenity</u>
Best Western Imperial Valley	Food coupons
Best Western Plaza Inn	None
Best Western Mission Inn	Free breakfast
Bisbee Inn	None
Bisbee Rentals	Food coupons
Bisbee Realty	Food coupons
Brewery Avenue Designs	None
Brunners Inn	None
Canyon Rose Suites	Free breakfast
Carroll Drive Apartments	None
Casa Grande Suite	None
Comfort Inn	Free breakfast
Cooper Crown Realty	Food coupons
Days Inn, Nogales	Free breakfast
Days Inn, Willcox	None
Del Sur Enterprises	None
Desert Jewel Apartments	None
Dixie's Desert Realty	Food coupons
Eli Property Management	None
El Rancho Motel, Bisbee	Meals
El Rancho Motel	Meals
Embassy Suites, Tucson Airport	Free breakfast
Embassy Suites, Tucson	Free breakfast
Evan's Apartments	Food coupons
Executive Apartments	(closed) ¹⁰
Francisco Grande Resort	Meals
Garden Plaza Apartments	Laundry service
Gateway Studio Suites	Free breakfast
Geronimo Trails Apartments	None
Green Valley Lodge	None
Howard's Guest House	Food coupons
La Quinta Inn, Tucson	None
La Siesta Motel, Ajo	Meals
Long Realty, Bisbee	None
Long Realty, Sierra Vista	None
Marine Hotel, Ajo	None
Montego Bay Apartments	None
Motel 6, Douglas	None
Mountain Steppes Apartments	None
Muckers Hideaways	None
Oasis Apartments	None

¹⁰ We identified and interviewed the one agent who rented at this location. The agent advised that he was not offered nor did he receive any incentives.

OK Property Management	None
Park View Apartments	None
Rancho La Perilla I	None
<u>Provider</u>	<u>Amenity</u>
Rancho La Perilla II	None
Ranchito Apartments	None
Realty Executive, Yuma	None
Residence Inn	Free breakfast
Ruben Nogales Rental	Food coupons
S. Redemer Rentals	None
RM Properties	Food coupons
San Jose Lodge	Meals
Schomac Property Management	Laundry service
Sierra Suites, Sierra Vista	Meals
Sun Canyon Inn	Free breakfast
Super 8 Motel, Gila Bend	None
Super 8 Motel, Nogales	Free breakfast
Super 8 Motel, Sierra Vista	Free breakfast
Thunder Mountain Inn	Free breakfast
Valle Realty	None
Valley Lodge	Meals
Viscount Suites	Free breakfast
Walker House	None
Wellesley Inn and Suites	Free breakfast

B. Supervisory BPAs renting to detailed agents

We also investigated the allegations that SBPAs, who had direct supervisory authority over detailed agents, rented out rooms in their homes or bought properties in the Douglas and Sierra Vista area to rent to those agents.

Our investigation found that with the exception of one agent who worked on one of the SBPA’s shift for one month, none of the SBPAs had any direct supervisory responsibilities for any of the other BPAs who rented their properties.¹¹ We also found no evidence that the SBPAs selected or played any role in the selection of the BPAs who were detailed to the Douglas Station or in determining the length of their temporary assignments.

¹¹ Technically, since the SBPA is a GS-12 grade position, a SBPA could theoretically have authority over agents who were at the GS-11 or lower grade levels. However, we found no evidence that the SBPAs directed their renters’ activities in this case.

The OIG OGC provided a legal opinion regarding SBPAs or their wives renting to agents, which is detailed below (See Attachment 3). Additionally, the Tucson U.S. Attorney's Office declined criminal prosecutive interest.

1. SBPA rented a room in primary residence

Our investigation identified that on separate occasions, one Douglas SBPA rented a bedroom in his primary residence to two BPAs while they were detailed to the Douglas Station. In a sworn affidavit, the SBPA admitted that he gave those BPAs receipts falsely reflecting that they had paid him the \$55 per day maximum lodging rate.

In a sworn affidavit, one of these BPAs admitted to paying the SBPA about one-half the amount that was noted on his receipts. The BPA then filed those false receipts with his travel vouchers and was reimbursed the full entitlement based on his claim. The U.S. Attorney's Office declined prosecution in this matter. We referred this matter to INS OIA for consideration of appropriate disciplinary action.

In a sworn affidavit, the second BPA maintained that he paid the SBPA the full \$55 per day and received a receipt from him reflecting that rate. The BPA then filed his travel voucher and was reimbursed based on that receipt. The BPA's conduct in this case and his rental at the [DELETED] residence (detailed above) were further reviewed in a separate OIG investigation. Those matters were referred to the Tucson U.S. Attorney's Office and are pending consideration of criminal prosecution of the agents for providing false statements under oath.

Finally, the OIG OGC's legal opinion determined that when a government employee rents a room in a private home, the government regulations treat this arrangement as nonconventional lodging. The regulations provide that employees who stay in nonconventional lodging may be reimbursed only for the actual costs the host incurs accommodating them. Moreover, the renting employee must be able to substantiate those costs to the agency, which then must determine if those costs are reasonable before reimbursing the employee.

Accordingly, the BPAs who rented rooms in the homes of other Border Patrol employees could have legitimately claimed lodging reimbursement only to the extent that they could show that their hosts incurred additional expense by putting them up and that this expense was reasonable. Absent such evidence, no lodging reimbursement was appropriate.

2. SBPAs' rental of income properties

We also determined that two Douglas Station SBPAs and their wives purchased rental income properties in the Sierra Vista and Douglas areas after the start of Operation Safeguard, and rented the properties to detailed agents.

The SBPAs voluntarily released copies of their rental contracts to us. After reviewing those documents and comparing them with the travel vouchers submitted, we identified 4 agents who had 13 rental instances at one SBPA's property. We found that in 2000 the SBPA and his wife received \$8,745 in rental income and in 2001 they received \$28,545 in rental income.

We identified 6 agents who had 10 rental instances at the other SBPA's property. We found that in 2001 the SBPA and his wife received \$15,000 in rental income. Both SBPAs voluntarily released copies of their income tax returns to the OIG. We found that they had claimed the income that they received from the rental properties on their income tax returns.

Our interviews of the agents who rented from the SBPAs revealed that the renters conducted all their business transactions with the SBPAs' wives. The renters claimed they paid the full per diem lodging rate and they received receipts reflecting their payments. They stated that they did not receive any lodging incentives.

The OIG OGC's legal opinion concluded that this arrangement was permissible because the wives rented income properties rather than rooms in a primary residence. Accordingly, the wives could charge a market rate and the government would reimburse the renters up to the maximum allowed lodging per diem rate.

3. Other cases

We identified 7 other SBPAs who, in some case with their wives, rented properties to detailed agents. We determined that three of those INS employees had engaged in suspected fraudulent activities when they rented out properties in the Douglas and Sierra Vista areas. The activities included renting an apartment and then sub-leasing it to detailed agents at a reduced lodging rate but providing the renters with receipts falsely reflecting that they paid the full lodging rate.

Additionally, we discovered that while on detail to Douglas, one BPA purchased a home in Sierra Vista but provided suspect receipts to support his travel voucher claim that he was renting that property from a real estate management firm. Based on those agents' potential violations of federal criminal statutes, we have initiated separate investigations

regarding their conduct. Those investigations are currently being coordinated with the Tucson U.S. Attorney's Office.

V. INS's Processing of Travel Vouchers

Our investigation focused on cash kickbacks and amenities offered by lodging providers in the Douglas and Sierra Vista areas. However, OIG auditors that reviewed the travel vouchers identified errors on numerous vouchers, resulting in \$17,362.15 in overpayments and \$931.48 in underpayments by the INS. These errors included agents claiming lodging costs twice for the same day, claiming to have paid a higher lodging rate than that reflected on the receipt, and claiming a higher M&IE rate than the maximum for the lodging area. These errors were not detected by the INS reviewing supervisors or by the INS Finance Center in Dallas, Texas.

We referred these errors to INS OIA for review and determination if systemic weaknesses existed at the INS Finance Center, Dallas, Texas. The OIG recommended to the INS OIA that it review the travel voucher approval process and the Dallas Finance Center, Travel Section. INS OIA referred the matter on August 7, 2002 to Judy Harrison, the INS Assistant Commissioner for Financial Management.

On December 12, 2002 INS OIA provided Assistant Commissioner Harrison's response to the OIG recommendation. She advised that the Dallas Finance Center had identified the errors in April 2001 and corrective measures were taken by informing travel payment staff that applicable per diem rates are based on the ordered point of travel and the lodging location at that time. Additionally, she said that the office that prepared the travel authorizations was contacted, and the requirements of the Federal Travel Regulation (FTR) were discussed with that office in detail. Her response documented further measures that the INS was taking to address the deficiencies, to include additional training for INS staff conducted by the General Services Administration on the FTR requirements, and the implementation on October 1, 2002 of the INS's new Federal Financial Management System. Her response also asserted that the errors identified by the OIG represented an immaterial amount of money and the time required to further analyze those computations would not be cost effective to seek reimbursement for overpayments (See Exhibit 4).

In addition, in conjunction with our audit of travel vouchers mentioned above, we identified 21 questionable instances of BPAs sharing the same lodging location (such as a husband and wife renting

the same place at the same time), potential double billing, filing unsupported claims, and receiving overpayments for lodging. We investigated those matters and determined that 16 instances were unsubstantiated. The remaining five potential irregularities were evaluated and referred to INS OIA for administrative inquiries. We have asked INS OIA report their findings and any follow-up actions to the OIG. Two of these complaints has been reported to the OIG as unsubstantiated, and the other three are still pending.

VI. Alleged Retaliation Against INS Complainants

A. INS OIA Special Agent and Douglas APAIC

As noted above, the two complainants in this case also made allegations about their treatment after they brought forward their complaints to the INS. They alleged that the INS OIA agent who initially was assigned to investigate their allegations and the Douglas Assistant Patrol Agent in Charge (APAIC) compromised their identities and status as the complainants during this investigation by informing the subjects of the investigation that the complainants had made allegations against them. The complainants also claimed that the INS OIA agent threatened them and refused to investigate the matters that they presented to him.¹²

Our investigation revealed that during the INS OIA investigation, Notices to Appear (NTA) were distributed to the two complainants and to other individuals who the INS OIA agent intended to interview. Once those individuals received their NTAs, they were able to tell others about their status and the INS OIA investigation. However, we did not find that the INS OIA agent or the Douglas APAIC disclosed the complainants' identities to the subjects of the investigations.

We also reviewed the complainants' claims that the INS OIA agent threatened them during their interviews. The INS OIA agent interviewed the two complainants and the other agents on their scheduled dates and times, and tape-recorded all of those interviews. We conducted a comparative analysis of the transcriptions with the audiotapes of those interviews. We determined that the recorder was not turned off during those interviews and that no threatening or harassing comments were detected from the tape or contained in the transcriptions. We did not find sufficient evidence to substantiate the claim that the INS OIA agent threatened the complainants.

¹² In June 2001, the two complainants who provided the initial allegations as well as three other Douglas BPAs filed a federal lawsuit in the U.S. District Court, Tucson, Arizona alleging age and unlawful discrimination in employment.

B. Complainants' training and promotion opportunities

The two complainants further alleged that the Douglas APAIC and other Douglas SBPAs harassed them by denying one of them a training assignment and the other a promotion opportunity and a training request.

With regard to the complaint about the training assignment, the complaining agent elected not to take the required downgrade from a GS-12 supervisory position to a GS-11 to become eligible for the training position at the Border Patrol Academy. Accordingly, he was not selected for an assignment to the training academy.

We also found that the other complainant, who was a Senior Patrol Agent (SPA), was not selected for a temporary promotion position to a SBPA because he was not assigned to the unit that had the promotion vacancy. Only agents who were assigned to units that had vacancies were eligible to fill those positions. With regard to his training request, he did not follow established procedures for requesting training. In addition, when he did submit the requested information, he provided a false date of rank, thereby increasing his apparent seniority. Since seniority is a determining factor in selecting individuals for training, the complainant's misleading information caused him to be ineligible for consideration.

In sum, our investigation did not substantiate the allegations that the complainants were denied promotions or training because of their complaints.

VII. INS's Corrective Actions

On December 7, 2001, John P. Chase, the INS OIA Director, submitted a Procedural Reform Recommendation entitled "Lodging During Detail Assignments," to George H. Bohlinger III, Executive Associate Commissioner for Management and Michael A. Pearson, Executive Associate Commissioner for Field Operations, 2001 (See Exhibit 5). Chase's memorandum pointed out various lodging issues and concerns that the OIG identified as occurring during Operation Safeguard. Chase also discussed the contents of this memorandum with the Chief and the Deputy Chief of the Border Patrol, as well as the Border Patrol Sector management in Tucson.

Subsequent to Chase's actions, Judy Harrison, the INS Assistant Commissioner for Financial Management, transmitted a memorandum in April 2002 to all INS employees concerning their lodging during temporary assignments (See Exhibit 6). The memorandum referred to

the Federal Travel Regulations and discussed the regulations concerning the types of accommodations, staying with friends or relatives, obtaining proper and correct receipts for lodging amounts, and receiving vouchers or credits from commercial lodging facilities.

Additionally, beginning in April 2002, the Tucson Border Patrol Sector began briefing all incoming detailed agents about rental and housing issues (See Exhibit 7). Tucson Sector officials began advising the agents about the regulations regarding submitting proper receipts for lodging. The Sector also instituted a practice of attaching Assistant Commissioner Harrison's April 2002 memorandum to all travel authorization forms for all employees who are being detailed.

In April 2002, William Veal, the Chief of the San Diego Border Patrol Sector, issued a memorandum to all Sector employees that addresses various questions relating to lodging at commercial and private lodging establishments. It provides overall guidance and details ethical and professional standards associated with filing travel vouchers (See Exhibit 8.)

In September 2002, then INS Commissioner James W. Ziglar issued a memorandum to all employees, entitled "Claiming Expenses for Official Travel." The memorandum advised employees of misconduct issues regarding the submission of travel vouchers and provided additional guidance for any travel related questions (See Exhibit 9.)

VIII. OIG's Conclusions and Recommendations

In this review, the OIG probed allegations related to fraud and other irregularities in connection with reimbursement for lodging on travel vouchers submitted by INS employees who were temporarily detailed to the Tucson Sector in support of Operation Safeguard. We reviewed more than 3000 vouchers and conducted many interviews of INS employees and lodging providers. During our review, we identified many instances of false and improper claims by INS agents as well as systemic weaknesses in the voucher approval process, including the process employed by the travel office of the Dallas, Texas Finance Center.

Our investigation found that when Operation Safeguard was initiated, INS management failed to plan adequately for the enormous lodging requirements to support detailed employees. The INS did not provide to detailed agents adequate guidance related to temporary assignments in support of Operation Safeguard until after these allegations surfaced.

Moreover, the INS never attempted to negotiate a lodging rate at local hotels for those individuals at a lower cost to the government. We believe the INS could have saved hundreds of thousands of dollars had it negotiated reduced lodging rates for the detailed BPAs and comparably reduced the agents' per diem entitlements. For example, the Mountain Vista Apartments raised its rental rate from \$35 per night to \$55 per night (the maximum lodging rate) and then offered a \$10 per day food coupon. The effect was to raise the cost to the INS by \$20 per night, although Mountain Vista increased its profits by \$10 per night. We believe these examples indicate that the INS could have negotiated reduced rates for detailed INS employees, saving significant sums for the INS in travel costs.

We also determined that many INS employees received reductions or cash back to rent at certain lodging facilities.¹³ In response to these rebates, some INS employees returned or refused to accept the cash kickbacks, but they were in the minority. During our interviews, however, many INS agents and lodging providers attempted to justify this practice as being equivalent to offering or accepting free meals or food coupons. We believe that such a justification is not remotely persuasive.

Because the U. S. Attorney's office has declined criminal prosecution on most cases, we are referring those matters to the INS for appropriate administrative action. We believe that the INS should examine each of these cases and make a decision as to whether the employee should be held accountable for their actions. At a minimum, we believe that employees who accepted cash kickbacks from lodging providers and claimed the full allowable amount for lodging and M&IE should be required to reimburse the government this amount. Employees who falsified their vouchers in support of their claims should be appropriately disciplined.

We are still investigating a few criminal cases, which will remain open until judicial proceedings are complete. The activities include agents renting an apartment and then sub-leasing it to detailed agents at a reduced lodging rate but providing the renters with receipts falsely reflecting that they paid the full lodging rate. Additionally, one BPA purchased a home in Sierra Vista but provided suspect receipts to support his travel voucher claim that he was renting that property from a real estate management firm. Based on those individuals' potential violations of federal criminal statutes, we have initiated separate investigations regarding their conduct.

¹³ One lodging provider, during a surreptitious telephone call, openly offered a cash kickback and false receipt to an OIG agent posing as a Border Patrol detailee.

We also believe that this review provides lessons for future INS operations that involve extensive details of agents. In our review, we found that lodging for detailed agents was available below the per diem rate, as evidenced by the amenities offered to many agents, including cash rebates. When the INS embarks on similar large-scale operations such as Operation Safeguard, we believe it should consider the availability of lodging accommodations in the area and seek to negotiate a reduced rate for lodging.¹⁴ The INS should also consider entering into direct arrangements with lodging providers to house detailed agents.

The OIG has recently completed a related investigation of the Border Patrol in Charleston, South Carolina, involving similar allegations as to BPAs who were temporarily detailed to the Border Patrol Training Academy. The OIG's report recommended that INS management consider the implementation of a policy similar to that used by the Federal Law Enforcement Training Center (FLETC) in Brunswick, Georgia, which requires that trainees stay at lodging facilities under contract with FLETC, unless those accommodations are unavailable. The OIG believes that INS management should apply this same policy to long-term details requiring large personnel support such as Operation Safeguard.

The OIG has been advised that INS OIA has recently initiated discussions with INS management and the Border Patrol to consider the creation of a position for housing management that would oversee housing at the training academies and locations with long term detail assignments

We also recommend that the INS provide more guidance to its employees who are detailed regarding the Federal Travel Regulations and temporary details. Most of the agents who we interviewed informed us that they received little or no training in properly preparing travel vouchers other than what they had received during their initial training at the Border Patrol Academy. All advised that they received no training specifically regarding extended-stay travel as it related to their detail to Operation Safeguard. The INS should also train supervisors and other officials who review and approve travel authorizations and vouchers,

¹⁴ This would be consistent with Department policy regarding extended travel. In a memorandum issued in September 1998, Former Assistant Attorney General for Administration Stephen R. Colgate advised that "when a travel assignment is expected to last more than 30 days and where it is possible to secure lodging and meals at less than the maximum allowable by travel regulations, total per diem, consisting of lodging plus the M&IE allowance, should be reduced" The memorandum also states that when the assignment is expected to exceed 90 days, such a reduction is mandatory. See Revised Policy Guidelines for Authorizing And Administering Extended Travel Assignments (Exhibit 10).

support staff who prepare travel authorizations, and the Dallas Finance Center auditors in the respective oversight responsibilities regarding travel vouchers. In addition, the INS should conduct training of all employees in their use of its automated Travel Management Program.

The guidance should discuss in clear and unequivocal terms how to treat promotional items, including complimentary meals, credits for meals, and cash reimbursements. The memoranda distributed by INS after the onset of this investigation are useful, but they should be supplemented by comprehensive guidance that is made available to all INS employees when they are detailed. Moreover, we recommend that INS develop a process for handling promotional items from employees that the employees obtain through the course of their official duties.

We also believe that the INS should strengthen its practices for filing and reviewing travel vouchers. We found that the review process at each level was lacking. The Dallas Finance Center needs to ensure its financial examination procedures correct the various problems in this area, including paying claims for double lodging costs for the same day, paying claims for lodging costs even when the claimed amount exceeds the authorized rate for a particular area, and paying claims for a higher rate than what was itemized on submitted receipts.

In sum, this investigation found troubling practices on the part of the INS and many of its agents regarding lodging reimbursement. We believe that the INS should take strong and immediate action to prevent these types of practices from recurring.

List of Exhibits

1. OIG letter to INS OIA, November 20, 2001, requesting INS furnish copies of agents' travel vouchers.
2. OIG OGC's legal opinion, May 28, 2002, relating to acceptance of amenities.
3. OIG OGC's legal opinion, November 26, 2002, regarding SBPAs renting to detailed agents.
4. INS response, December 12, 2002, processing of travel vouchers.
5. INS OIA Procedural Reform Recommendations, December 12, 2001.
6. INS Assistant Commissioner for Financial Management memo, April 2002.
7. Tucson Sector Chief Patrol Agent David Aguilar's memo, April 25, 2002, relating to Local Actions taken on Allegations.
8. San Diego Sector Chief Patrol Agent William Veal's memo, April 24, 2002, regarding Ethical Issues Involving Travel Vouchers.
9. INS Commissioner Ziglar's memorandum dated September 5, 2002, Subject "Claiming Expenses for Official Travel."
10. Assistant Attorney General for Administration Stephen Colgate's memo, September 1, 1998, regarding Policy Guidelines for Extended Travel Assignments.


EXHIBIT 1



November 20, 2001

MEMORANDUM FOR JOHN R. CHASE
DIRECTOR, OFFICE OF INTERNAL AUDIT
IMMIGRATION AND NATURALIZATION SERVICE

FROM:


THOMAS J. BONDURANT
ASSISTANT INSPECTOR GENERAL
FOR INVESTIGATIONS

SUBJECT: REQUEST FOR RECORDS

The Office of the Inspector General, Tucson Field Office, is currently conducting a comprehensive review of allegations reported to the OIG concerning possible voucher irregularities by Border Patrol Agents detailed to Operation Safeguard at Douglas, Arizona. Our investigation will focus on fiscal years ~~2000~~ and 2001.

The INS, Western Region, has identified and furnished the OIG with a list of names of Border Patrol Agents assigned during this time period. We have also been advised that the travel vouchers submitted by the agents are located at the finance center in Dallas, Texas. In order to sufficiently determine the scope of the issues involved it is necessary that a copy of these vouchers be obtained and analyzed.

I am therefore requesting that INS furnish a copy of these vouchers and all related receipts to the Office of the Inspector General. As you are aware, this case is the subject of congressional scrutiny, therefore it is requested that INS complete this request within thirty days of receiving this request.

Your cooperation and assistance is appreciated. If there are questions your staff may contact SAC Roger M. Williams, OIG Operations or ASAC Joseph Cuffari, Tucson Field office.

EXHIBIT 2



U.S. Department of Justice

Office of the Inspector General

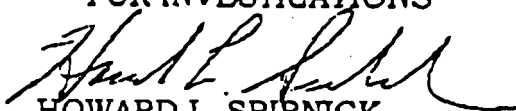
Washington, D.C. 20530

May 28, 2002

OGC-02-004

MEMORANDUM FOR THOMAS J. BONDURANT
ASSISTANT INSPECTOR GENERAL
FOR INVESTIGATIONS

FROM:


HOWARD L. SRIBNICK
GENERAL COUNSEL

SUBJECT:

Legal Opinion Regarding Amenities Offered
By Lodging Providers to Border Patrol Agents

You have requested a legal opinion regarding whether it was appropriate for Border Patrol Agents (BPAs) to accept various amenities offered by lodging providers while on extended travel away from their home duty stations in the Douglas, Arizona area. As we understand it, the BPAs at issue traveled under the lodging-plus per diem system. This means their daily per diem rate was calculated "on the basis of the actual amount the traveler pays for lodging, plus an allowance for meals and incidental expenses (M&IE), the total of which does not exceed the applicable maximum per diem rate for the location concerned." 41 C.F.R. § 300-3.1. Under this method, the traveler collects the full M&IE rate regardless of actual expenses.¹ If the traveler spends more than the maximum authorized amount he bears that cost. If he spends less, he may keep the difference.

The reimbursement claims at issue here were for \$55.00 per day for lodging (the maximum rate allowed) as well as the full M&IE rate. The amenities accepted differed in type from complimentary meals, to credits and vouchers which could be used toward the cost of meals or groceries, to cash payments intended to cover the cost of meals or groceries. You inquire whether the BPAs who accepted these amenities

¹ Actual expense reimbursement is provided for under certain circumstances not applicable here. See 41 C.F.R. § 301.11.300.

should have claimed reimbursement for a reduced lodging and/or meal rate. We address the various factual scenarios you present below.

I. General Prohibition on Federal Employees Accepting Gifts

There is a general prohibition on federal employees accepting gifts given because of their official position. See generally 5 C.F.R. § 2635.201-205. However, discounts and benefits offered to a broad class, including a broad class of government employees are excluded from the definition of gift. Id. at § 2635.203(b)(4).

As we understand it, all of the amenities at issue were offered either to all guests or to all long-term guests of the involved establishments. Accordingly, the gift prohibition is not implicated in these cases.

II. Free Breakfast and Happy Hour

One of the hotels at which the BPAs stayed charged the full \$55 lodging rate but offered a free breakfast and happy hour to its guests. Regulations promulgated by the General Services Administration (GSA) specifically address the question of complimentary meals provided by a hotel/motel. The GSA regulations are written in question and answer format. The applicable provision states:

If my agency authorizes per diem reimbursement, will it reduce my M&IE allowance for a meal(s) provided by a common carrier or for a complimentary meal(s) provided by a hotel/motel? No. A meal provided by a common carrier or a complimentary meal provided by a hotel/motel does not affect your per diem.

41 C.F.R. 301-11.17.² Accordingly, the BPAs who stayed at this hotel were free to accept the complimentary breakfast and happy hour without taking any reductions in the per diem rate.

² A memorandum from the Finance Staff of the Justice Management Division to employees of the Offices Boards and Divisions of the Department provides consistent advice: "Must a deduction be made for meals on aircraft or complimentary breakfasts at hotels? No complimentary meals provided to the traveler by hotels or meals provided while on common carriers do not require reductions in M&IE."

III. Credit Toward Meals Eaten at Hotel

One hotel frequented by BPAs provided a credit of \$15 per day to be offset against money spent on meals eaten at the hotel. For example, if a BPA spent \$20 dollars per day on hotel meals over a 30 day period for a total of \$600, the hotel would subtract \$450 (\$15 x 30 days) from his or her bill at the end of the month. This credit was applicable only to that portion of the bill spent on meals, did not result in any cash payments to BPAs, was not credited toward the lodging portion of the bill, and was applicable only to meals eaten during the current stay. A BPA who did not eat his or her meals in the hotel got no benefit from the credit.

At the time the credits at issue were given, the GSA regulations provided as follows:

What must I do with promotional benefits or materials I receive from a travel service provider? Any promotional benefits or material you receive from a private source in connection with official travel are considered property of the Government. You must: (a) Accept the benefits or material on behalf of the Federal Government; and (b) Turn the benefits or material over to your agency in accordance with your agency's procedures established under 41 C.F.R. 101-25.103.

41 C.F.R. 301-53.1.³

Is there any instance when I may make personal use of benefits furnished by a travel service provider? Yes, you may use benefits (e.g., free meals, check-cashing privileges, or memberships in executive clubs) only if: (a) the Government can not use the benefit; (b) to receive the immediate benefit, you do not forfeit a future benefit the Government could use; and (c) the benefit can not be redeemed for cash value.

41 C.F.R. § 301-53-10.

³ The rule was recently changed to allow government travelers to make personal use of promotional benefits earned on official travel. The change in the rule does not affect the matters at issue here because it applies only to promotional benefits used after December 28, 2001, the effective date of the change.

There are two possible ways of viewing the meal credit, both of which would permit the employee to use the credit without reducing his or her meal allowance.⁴ First, it could be categorized as the equivalent of a complimentary meal the acceptance of which, as discussed above, does not require a reduction in per diem. Second, it could be categorized as promotional material. Because it meets the standards set forth in § 301-53-10 – the government could not use the credit, no future benefit was forfeited, and it could not be redeemed for cash value – it falls into the category of promotional materials an employee may accept. Accordingly, we believe that the BPAs were free to eat meals in the hotel and apply the credit to the cost of those meals without reducing their per diem rate.

IV. Supermarket Coupons

Some of the BPAs rented units in an apartment complex for which they were each charged \$55.00 per day. In order to compete with the benefits offered by the hotels discussed above, the management of the complex supplied the BPAs with coupons redeemable at a local supermarket in amounts up to \$10.00 for each day of their stay depending on the size of the unit in which they stayed. The management paid face value for the coupons, which came in denominations of \$5.00, \$10.00, \$20.00, and \$50.00. When purchasing items at the supermarket, the BPA could obtain no more than \$4.99 in cash as change no matter the denomination of the coupon submitted. There was no limit on which items could be purchased using the coupons.

As with the amenities discussed above, we do not believe that the issue here is whether the BPAs should have deducted the amount of the coupons from their lodging costs. They paid the complex \$55.00 per day, whether or not they accepted or used the coupons. Rather, the issue is whether the BPAs should have treated the coupons as promotional material to be turned over to the government and whether, if they did not, they are liable to the government for the value of those coupons.⁵

⁴ We do not believe it would be proper to analyze the issue in terms of whether the BPAs were required to reduce their claimed lodging costs because the credit was not applied towards such costs. All BPAs who stayed at the hotel paid the hotel \$55.00 per night, whether or not they took advantage of the credit by eating their meals in the hotel.

⁵ Unlike the meal credit discussed above, we do not believe the supermarket coupons can be equated to a complimentary meal, particularly since they apparently were not limited to the purchase of food items.

As discussed above, promotional material is to be turned over to the agency if: (1) the government can use the benefit; (2) a future benefit the government could use will be forfeited and/or (3) the benefit can be redeemed for cash value. Although it is a close question, it appears that the BPAs should have turned the coupons over to the INS as promotional material belonging to the government. Unlike the meal credit discussed above, these coupons were not tied to any particular stay at the apartment complex and theoretically could have been used by the INS to reduce the cost of sending travelers to the area. Moreover, although the coupons did not have cash value, the BPAs could receive some cash benefit from them by limiting the items they purchased and collecting the \$4.99 in change permitted by the supermarket.

The regulations assume, however, that the agency has established a procedure by which it will receive promotional materials from its employees. 41 C.F.R. 301-53.1 (b). It does not appear that the INS either provided the BPAs with any guidance about the use of the coupons or made known to them any such procedures. Accordingly, we fault INS management for failing to take control of the situation rather than the individual BPAs who may have used the coupons during their stay in the Douglas area.

V. Cash Rebates Intended to Cover the Cost of Food

Some of the BPAs stayed in a private home for which they were charged \$55.00 per day. To compete with the deals being offered by the hotels and apartment complexes, the owner of the home gave each agent who stayed in his property a cash "rebate" of \$8.00 per day, while still providing a receipt for \$55.00 in lodging costs. The owner explained he intended the money to cover the cost of breakfast, which he, unlike the larger hotels, did not provide his guests. In another variation of this scenario, a real estate broker/property manager provided BPAs with lodging receipts for \$55.00 a day while only actually collecting \$40.00 per day. The \$15.00 was supposed to be the equivalent of the food coupons being provided by the competing apartment complex.

We believe there is no doubt that the BPA's who received these rebates should not have claimed the full lodging allowance of \$55.00 per day because they did not pay \$55.00 per day in lodging costs. The regulations are clear that employees are to be reimbursed for "actual lodging cost not to exceed the maximum rate for the [temporary duty] location . . ." 41 C.F.R. § 301-11.100. The regulations also provide that "[a]ll promotional materials (e.g. . . . cash . . .) received by employees in conjunction with official travel and based on the purchase of . . . services are properly considered to be due to the Government and may not be retained by the employee." 41 C.F.R. § 101-25.103.2(a). Thus, the BPAs

who stayed at these establishments and accepted the rebates were only entitled to be reimbursed for the amount they actually paid the establishments and could be required to repay the difference between what they paid and what they were reimbursed based on their claims from receipts.

We also believe, however, that the INS shares the blame in this instance. INS should have been aware that there were lodging providers willing to provide lodging for less than the applicable maximum per diem rate and should have acted accordingly. In this regard, we note that the regulations specifically permit an agency to prescribe a per diem rate lower than the prescribed maximum when it "can determine in advance that lodging and/or meal costs will be lower than the per diem rate." 41 C.F.R. 301-11.200.

VI. Use of Government Credit Cards

You also inquired whether government employees on official travel are required to use their government-issued credit cards to pay for the travel expenses they incur. The applicable regulations provide as follows:

What is the required method of payment for official travel expenses? You are required to use the Government contractor-issued travel charge card for all official travel expenses unless you have an exemption.

41 C.F.R. 301-51.1.

What official travel expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card? The Administrator of General Services exempts the following from the mandatory use of the Government contractor-issued travel charge card:
 (a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card

41 C.F.R. 301-51.2. These regulations were adopted pursuant to a 1998 law and were effective on May 1, 2000. 65 Fed. Reg. 21,365 (2000). Accordingly after May 1, 2000, to the extent that employees were able to pay with the Government credit card, they were required to do so.

VII. Sharing a Room

Finally, you inquired regarding the rules on reimbursement when two married employees share lodging. The relevant regulations provide as follows:

How does sharing a room with another person affect my per diem reimbursement? Your reimbursement is limited to one-half the double occupancy rate if the person sharing the room is another Government employee on official travel. If the person sharing the room is not a Government employee on official travel, your reimbursement is limited to the single occupancy rate.

41 C.F.R. § 301-11.13. There is no rule requiring employees, married or not, to share a room. If they choose to do so, however, reimbursement is limited to one-half the double occupancy rate.

If you have any additional questions please contact Gail Robinson at (202) 616-0644.

cc: Joseph Cuffari
Tucson Field Office

EXHIBIT 3



U.S. Department of Justice

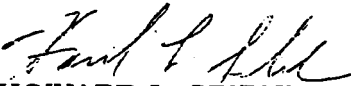
Office of the Inspector General

Washington, D.C. 20530

November 26, 2002

OGC-02-007MEMORANDUM FOR T.J. BONDURANT
ASSISTANT INSPECTOR GENERAL
FOR INVESTIGATIONS

FROM:


HOWARD L. SRIBNICK
GENERAL COUNSEL

SUBJECT:

Legal Opinion Regarding Lodging Provided to
Border Patrol Agents by Fellow Border Patrol
Agents

You have requested an opinion regarding the legality of certain lodging arrangements entered into by Border Patrol Agents (BPAs) who were on extended travel away from their home stations in the Douglas, Arizona area. As we understand it, there are two types of lodging arrangements at issue. In the first instance, two BPAs, on separate occasions, rented rooms in the home of a fellow BPA who was permanently stationed in the Douglas area. The evidence indicates the renters and the owner had worked together previously and shared a friendship.¹

In the second case, two Supervisory Border Patrol Agents (SBPAs) who were permanently stationed in the Douglas area, together with their wives, purchased rental properties separate and apart from their primary residences. They then rented these houses to BPAs agents who were sent to the Douglas area on extended travel. None of the agents to whom they rented were in their direct line of supervision. The renters were recruited via word of mouth and the wives managed the properties.

For the reasons explained below, we have concluded that although nothing prevented the traveling BPAs from renting rooms in a fellow agent's home, the applicable regulations provide that the reimbursement

¹ You explained that although the homeowner is currently a supervisor, he did not hold this title at the time he rented to his friends. Accordingly, there are no issues regarding potential misuse of a supervisory position.

for such an arrangement was limited to the actual additional expenses incurred by the host. We have further concluded that the SBPAs were free to let their rental properties to BPAs whom they did not supervise, and that because separate rental properties were involved, reimbursement was not limited to actual expenses incurred.²

Analysis

Federal travel regulations provide specific rules regarding the allowable reimbursement for different types of lodging.

- (a) Conventional lodgings. (Hotel/motel, boarding house, etc.) will be reimbursed the single occupancy rate.

- (c) Lodging with friend(s) or relative(s) (with or without charge). You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.

- (d) Nonconventional lodging. You may be reimbursed the cost of other types of lodging when there are no conventional lodging facilities in the area (e.g., in remote areas) or when conventional facilities are in short supply because of an influx of attendees at a special event (e.g., World's Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.

41 C.F.R. § 301-11.12.

Under these regulations, it is clear that the BPAs who rented rooms in their fellow BPA's home could be reimbursed for lodging expenses only to the extent they could substantiate any additional costs the homeowner incurred as a result of their stay. Moreover, this would

² As we understand it, the SPBAs purchased their rental properties sometime after the Border Patrol had begun sending BPAs to the Douglas area in large numbers. Accordingly, there is no argument that the SPBAs had access to any special knowledge as a result of their jobs or that they misused any such knowledge. Similarly, that the renters were not in the chain of command of their landlords eliminates issues about whether the supervisors could have misused their positions to recruit or hold the renters.

have been the case even if they and the homeowner had not shared a friendship.

In numerous decisions interpreting the regulation, the Office of the Comptroller General has made clear that “[r]egardless of the character of the relationship between the employee and his host . . . claims involving noncommercial lodgings should be supported by information indicating that the lodging charges are the result of expenses incurred by the party providing the lodging.” Matter of Clarence R. Foltz, 55 Comp. Gen. 856 (1976); see also Matter of Peter Lalic, 68 Comp. Gen. 329 (1989).

Accordingly, the BPAs who rented rooms in their colleague’s home could have legitimately claimed lodging reimbursement only to the extent that they could show that their host incurred additional expenses by putting them up. Absent such evidence, no lodging reimbursement was appropriate.

BPAs who stayed in actual rental properties owned by other Border Patrol employees were not subject to this limitation. Under the regulations and the Comptroller General decisions interpreting them, the crucial distinction is whether the property that was rented can properly be labeled commercial in nature. Separate units that are not part of the owner’s home and that would be available to the general public for rent are considered commercial in nature. Moreover, “commercial type accommodations do not automatically turn into noncommercial accommodations under the regulations merely because the employee traveler knows the lodging operator, or the operator is a friend or even a relative.” Matter of John T. Bailey, B-230,472, 1989 WL 240521.

Accordingly, the BPAs who rented homes from the two SBPAs would have been entitled to reimbursement for the cost of the rental, assuming the amount charged was consistent with market rates and did not exceed the maximum rate authorized for the area.

cc: Roger Williams
Joseph Cuffari

EXHIBIT 4



U.S. Department of Justice
Immigration and Naturalization Service
Office of Internal Audit

425 I Street NW
Washington, DC 20536

DEC 12 2002

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File
12/12/02
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12/12/02
DE

MEMORANDUM FOR T. J. BONDURANT
ASSISTANT INSPECTOR GENERAL
FOR INVESTIGATIONS
OFFICE OF THE INSPECTOR GENERAL

FROM: *Sue Armstrong*
Sue Armstrong
Assistant Director
Internal Investigations Branch

SUBJECT: Office of Inspector General Case No. 0205111
Re: UNKNOWN

Please find attached documentation of the resolution of the subject case. We have closed the case and will take no further action on it.

If you have any questions regarding this case, please contact me at (202) 514-5765.

Att.



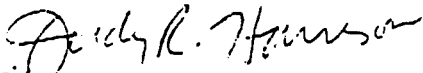
U.S. Department of Justice
Immigration and Naturalization Service

HQFIN 80/1

425 I Street NW
Washington, DC 20536

MEMORANDUM FOR SUE E. ARMSTRONG
ASSISTANT DIRECTOR
OFFICE OF INTERNAL AUDIT

THROUGH:

Judy R. Harrison 
Assistant Commissioner
Office of Financial Management

FROM:

Tommy J. Dodson 
Director
Dallas Finance Center, Office of Financial Management

SUBJECT: Office of Internal Audit (OIA) Case No. 02X03101

The Office of Financial Management (OFM), Dallas Finance Center (DFC) has reviewed the information referenced in OIA Case No. 02X03101 that related to an incorrect use of per diem rates as reported by the Office of Inspector General as a result of an audit of travel vouchers.

The OFM DFC detected the errors in April 2001, and corrective measures were taken by informing travel payment staff that applicable per diem rates are based on the ordered point of travel and the lodging location at that time. Additionally, the office that prepared the travel authorizations was contacted, and the requirements of the Federal Travel Regulation (FTR) were discussed in detail.

The DFC has provided extensive training to better educate the Immigration and Naturalization Service (INS) staff of the FTR requirements. The General Services Administration, who is the authoritative source for FTR training, conducted on-site training for DFC Permanent Change of Station staff in April 2002. Additional Temporary Duty training will be given to DFC staff in October 2002, which will be conducted by a former instructor of travel at the Community College of the Air Force.

Memorandum for Sue E. Armstrong
Subject: Office of Internal Audit (OIA) Case No. 02X03101

Page 2

The OFM also provided extensive training on travel voucher preparation at the INS National Travel Management Conference in June 2002. Managers from offices throughout the INS who attended the conference received specific instruction on how to prepare proper travel vouchers. Implementation of the Federal Financial Management System (FFMS) on October 1, 2002, is expected to increase system and payment efficiencies. The INS will also implement an improved Travel Manager system which will provide additional controls to ensure claims submitted by travelers are accurate, and in compliance with the FTR.

The DFC staff had less than one year of experience in travel reimbursements during the time period in which the FY1999 and FY2000 vouchers were processed and the errors occurred. The quality of audits has increased as a result of experience gained by the payment staff, refinement of payment practices and controls, and continued emphasis on training.

The DFC will continue reviewing the exception items referenced and will work closely with GSA to determine if collection of overpayments is required. Most of the documentation supporting the claims has been sent to the archives for storage. Retrieval of archived documentation and resources required to research and evaluate each item will incur some administrative costs. Because the amount of errors in question is immaterial, and the analysis of each overpayment is quite complex, a cost benefit analysis indicates collection of the amounts due would not benefit the INS.

The revised processing procedures, education, and increased expertise of the DFC staff, coupled with the future deployment of Travel Manager and FFMS, provides reasonable assurance future travel voucher discrepancies will be minimized.

If you have any questions, please contact me at 214-915-6111.



U.S. Department of Justice
Immigration and Naturalization Service
Office of Internal Audit

425 I Street NW
Washington, DC 20536

August 7, 2002

T.J. 10/11
Tom *af*
Aug 11 *for follow up.*

MEMORANDUM FOR T.J. BONDURANT
ASSISTANT INSPECTOR GENERAL
FOR INVESTIGATIONS
OFFICE OF INSPECTOR GENERAL

FROM: Sue E. Armstrong
Assistant Director
Office of Internal Audit

SUBJECT: Office of Internal Audit (OIA) Case No. 02X03101/
Office of Inspector General (OIG) Case No. 2002005111M

This is in response to your memorandum of May 15, 2002, regarding the above-referenced case. Attached please find a copy of our referral to the Immigration and Naturalization Service's Office of Financial Management, which provides our determination in this matter. If you have any questions, please do not hesitate to contact me at (202) 307-5885.

Attachment



U.S. Department of Justice
Immigration and Naturalization Service
Office of Internal Audit

425 I Street NW
Washington, DC 20536

August 7, 2002

MEMORANDUM FOR JUDY R. HARRISON
ASSISTANT COMMISSIONER
OFFICE OF FINANCIAL MANGEMENT

FROM: Sue E. Armstrong
Assistant Director
Office of Internal Audit

SUBJECT: Office of Internal Audit (OIA) Case No. 02X03101

The attached materials were received from the Office of Inspector General (OIG). They are the result of an audit of travel vouchers performed by the OIG in connection with an investigation related to reimbursement claims filed by employees on detail to the Tucson Sector. The OIG audited vouchers filed in FY 1999 and FY 2000. As a byproduct of the audit, the OIG prepared the attached report, and states that it appears that the Dallas Finance Center made errors in processing the vouchers, in particular, paying incorrect lodging and meals and incidental expenses rates. The OIG states it appears that the errors resulted in \$16,430.67 being paid improperly to employees. This matter is being forwarded to your for your review, consideration of appropriate corrective action if you deem it warranted, and response back to this office.

The OIG recommended an audit of procedures in place at the Dallas Finance Center for processing vouchers. We are also interested in your response regarding seeking repayment from employees who were improperly reimbursed, if you determine that is the case. Please advise us in writing no later than 60 days from the date of this referral as to your progress in addressing these findings. If you have any questions, please do not hesitate to contact me at 7-5885.

Attachment



U.S. Department of Justice

Office of the Inspector General

Washington, D.C. 20530

May 15, 2002

MEMORANDUM

TO: John Chase, Director
Immigration & Naturalization Service
Office of Internal Audit

FROM: Thomas J. Bondurant 
Assistant Inspector General
For Investigations

SUBJECT: 02XC3101
OIG Complaint 2002005111-M

The Office of the Inspector General (OIG) has been conducted an investigation in Southern Arizona as it relates to the lodging of Border Patrol Agents (BPAs) detailed in support of Operation Safeguard. I believe that you are aware that our investigation involved an audit of travel vouchers submitted by detailed BPAs for a two- year period. The covered period was FY 1999 and FY 2000.

OIG Auditor Herman Smeenck has now completed this audit and as a byproduct he produced a report that detailed errors on a number of travel vouchers paid totaling \$16,430.67 in overcharges to the INS. I have enclosed a copy of this report for your review as well as copies of the source documents that serve as the basis for our complaint.

It is our understanding that the Travel Section of the INS Finance Center in Dallas, Texas is responsible for the review of travel vouchers prior to payment being authorized. We believe that your office should consider an audit of this process to determine if there is a systemic weakness that requires corrective action.

This matter is being referred to your office as a management issue. Please let me know within sixty days of your response to this matter.

As always, your cooperation in this matter of mutual interest is appreciated.

Received By: Williams, Roger M Date Received: 05/15/2002 How Received: I

SUBJECT: UNK INS PERSONNEL, SSNO:
 Title: ADMIN Pay Plan: - / D.O.B.: / /
 Component: INS EOD Date: / / Alien Number:
 Misc: F.B.I. No.:
 Home: , , B.O.P. No.:
 Phone: - - ZIP: D/L STATE:
 Work: DALLAS FINANCE CENTER TRAVEL SECTION, DALLAS, TX No.:
 Phone: - - ZIP:
 Judicial Action: Administrative Action:

COMPLAINANT: SMEENK, HERMAN SSNO:
 Title: ACCT Pay Plan: - / D.O.B.: / /
 Component: OIG EOD Date: / / Alien Number:
 Misc: F.B.I. No.:
 Home: , , B.O.P. No.:
 Phone: - - ZIP: D/L STATE:
 Work: OIG HQ, INVESTIGATIONS DIVISION, WASHINGTON, DC No.:
 Phone: 202-616-0650 ZIP:
 Contact: Confidential: N Revealed: Authority:

ALLEGATIONS: Offense: 412 - Job Performance Failure
 Occurrence Date: ONGOING Time: UNKNOWN City: DALLAS, State: TX
 Details:

The OIG initiated an investigation concerning possible travel voucher fraud in connection with the unauthorized acceptance of amenities in the form of cash credits, meal allowances, grocery food coupons, that were offered by hotels in Southern Arizona that were competing for business to house Border Patrol Agents in support of Operation Safeguard.

In that regard, an audit of travel vouchers submitted, was conducted (OIG 2001002553-I Gadsden Hotel, et al), for a two year period covering FY 99 and 2000

As a byproduct of this OIG investigation, this audit found what may be a systemic problem at the INS Finance Center, Travel Section, with the accurate review of travel vouchers prior to payment thus resulting in overpayments to BPAs. This audit discovered multiple errors for this two year period that totaled over \$16,000.00.

DISPOSITION DATA: Office: TC Date: 05/15/2002 Disposition: M Approval: RMW
 Referred To Agency: INS/OIA Component: INS
 Fee Case: N Civil Rights: N Priority: N
 Other Number: Consolidated Case Number:
 Remarks:

Relates to OIG 2001002553, Gadsden Hotel, et al.

Memo from AIG/I to Director Chase requesting consideration of OIA Audit of travel section at INS Finance Center, Dallas, Tx. and response within 60 days.

EXHIBIT 5



U.S. Department of Justice
Immigration and Naturalization Service
Office of Internal Audit

DEC 12 2001

ORIG:MR. BOHLINGER

425 I Street NW
Washington, DC 20536


cc: MCGEE
FILE

DEC 12 2001

MEMORANDUM FOR GEORGE H. BOHLINGER III
EXECUTIVE ASSOCIATE COMMISSIONER
MANAGEMENT

MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
FIELD OPERATIONS

FROM:


John P. Chase
Director
Office of Internal Audit

SUBJECT: Procedural Reform Recommendation – Lodging During Detail Assignments

The purpose of this memorandum is to provide information regarding findings in several investigations of allegations of employee misconduct related to lodging arrangements and claims for reimbursement. The allegations were lodged primarily in areas in which there are a large number of detailed employees, such as at the Service's training academics or in long term, large scale enforcement operations. These findings have ethical and misconduct implications for individual employees, and highlight the agency's obligation to disseminate information to detailees and permanent staff in the location of the detail, in a manner that protects employees from inadvertently becoming involved in situations that represent violations. It is recommended that this information be reviewed with an eye toward correcting systemic weaknesses.

The information presented below is based upon prior and current investigations by the Office of Internal Audit (OIA) and the Office of Inspector General (OIG) into situations described below. Under each allegation is a discussion of the potential violation or ethical consideration.

Service employees coming to a detail assignment were put in contact with by other employees or learned of by word of mouth, local property management companies which provided lodging at a lower rate than the allowable daily lodging rate, and were issued receipts reflecting the full allowable amount. They then vouchered the full allowable daily lodging rate and were reimbursed.

This scenario, in which employees were issued a receipt which did not accurately reflect the amount they paid for lodging is a clear violation, which can subject the employee to criminal penalties (18 United States Code 287, False, Fictitious or Fraudulent Claims), or disciplinary or adverse action. Employees are authorized to claim up to the allotted lodging amount in a particular location. If they are not charged the full amount, they are not entitled to claim it.

Service employees coming to a detail assignment were put in contact with by other employees or learned of by word of mouth, a local commercial establishment or property management company which provided lodging at the full allowable daily lodging rate, but were given a "rebate" each day. These rebates took various forms depending upon the location: vouchers usable at hotel dining, bar and barber facilities; vouchers usable at local grocery stores; cash; and also a certain dollar amount per day that an employee could charge to their room for food and incidentals at the hotel. The rebate amount was not included in or deducted from the lodging rate in any of these situations.

In these scenarios, the rebate or credit falls into the category of promotional material received in conjunction with official travel from a commercial activity. This is not the equivalent of a hotel offering a continental breakfast or happy hour to all guests, built into the lodging rate, for which a federal traveler would not have to account. Title 41 of the Code of Federal Regulations (CFR) Section 101-25.103-2 states that, "All promotional materials, (e.g., bonus flights, reduced fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, etc.) received by employees in conjunction with official travel and based on the purchase of a ticket or other services (e.g., car rental) are properly considered to be due the government and may not be retained by the employee. The Comptroller General of the United States has stated that employees are obligated to account for any gift, gratuity or benefit received from private sources incident to the performance of official duties (see Comp. Gen. Decision B-199656, July 15, 1981). When an employee receives promotional material, the employee shall accept the material on behalf of the United States and relinquish it to an appropriate agency official." If an employee uses a coupon or credit provided by a lodging establishment, they should adjust the Meals and Incidental Expenses (M&IE) claimed on their voucher accordingly (e.g., subtract the amount of the credit or value of the coupon per day from their M&IE claim).

Another alternative would be for management to negotiate a favorable market rate for lodging with the providers, and disallow gratuities up front. It is noted that the INS is not currently in compliance with 41 CFR 101-25.103-1, which states that federal agencies in a position to receive promotional materials shall establish internal procedures for the receipt and disposition of same.

Service employees rented rooms in private residences located for them by spouses of permanent academy or Sector employees. Additionally, some of the rental properties were owned by Service employees. In some cases, employees were charged the full allowable daily lodging rate, in others, they were charged less than the full daily rate, but were issued a receipt of the full rate amount.

- **The spouses of permanent academy staff operated as “relocation” entities and provided lodging for incoming detail instructors. Some of the spouses were operating as an incorporated business entity, others were not and were simply issuing monthly lodging receipts under a fictitious business name. Some of the spouses paid a “finders fee” to staff who forwarded names of potential detail renters to them.**

While there is no prohibition against owning a rental property and renting to other employees (or through a rental company), some factors should be considered.

The first scenario, above, again represents a clear violation in the form of a false claim if the employee submits a voucher claiming the full allowable lodging rate. The issue of employee or spousal employment in the real estate business, and either locating or providing rental properties to other employees who come to the area on an official detail, has several ethical implications. If the rental business was not an ongoing concern before the details started, the employee could be construed to be profiting from knowledge related to their official duties (e.g., the number and identity of incoming detailees), a possible conflict of interest under 18 USC 208, prohibition against participating in matters affecting an employee’s own financial interests (See also, 5 CFR Part 2635, Use of Nonpublic Information). Even if the rental business is managed by the spouse, the spousal relationship still equates it with an employee’s own financial interests.

Evidence obtained in these investigations disclosed that employees who claimed there was an “arms length” relationship with their spouse’s business in that the business was in the spouse’s name only, actually engaged in showing properties to other employees, and served as intermediaries for messages about properties and rental payments. This confirmed that the situation reflected upon their own financial interests.

There may also be an inappropriate supervisor/subordinate relationship if a permanent supervisory employee (or spouse) is engaging in a financial transaction with someone under their supervision. The “finders fee” is inappropriately offered and accepted. Employees should not be profiting from information obtained by virtue of their official positions.

Service employees rented rooms in the private residences of permanent employees of a detail location, and were charged and issued a receipt for the full daily lodging rate, which they then claimed for reimbursement on a voucher.

Again, there is no prohibition against owning rental property and renting to other employees. however, the Federal Travel Regulations speak to the issue of rentals in one’s primary residence.

EXHIBIT 6



US Department of Justice
Immigration and Naturalization Service

HQFIN 80/9

John Chase

425 I Street, NW
Washington, DC 20536

2002

MEMORANDUM FOR ALL INS EMPLOYEES

FROM: Judy R. Harrison *Judy R. Harrison*
Assistant Commissioner
Office of Financial Management

SUBJECT: Frequently Asked Questions #18—Lodging During Temporary Duty Travel

This is the eighteenth in a series of frequently asked question messages from the Office of Financial Management concerning policy for travel. The topic of this memorandum is Lodging During Temporary Duty Travel (TDY). If you have further questions, please contact Tamara Echols at (202) 307-4617 or Kurt Snyder at (202) 616-9939.

Please note that the information contained in these messages does not supersede specific language in the Immigration and Naturalization Service's bargaining unit contracts. Rather, the provisions of these messages should be understood and applied in a manner consistent with the requirements of the applicable labor agreement, if any.

General Rules

1. QUESTION: What types of accommodations should I obtain while on official TDY?

ANSWER: Employees are encouraged to stay in conventional lodging facilities, such as commercial hotels, motels and lodges, that have been approved by the Federal Emergency Management Agency (FEMA) as "approved accommodations." For a list of FEMA approved hotels, you may visit www.policyworks.gov/travel or make your reservations through your local Travel Management Center (TMC). Reference: *Federal Travel Regulation (FTR) Section 301-11.11*

Subject: Frequently Asked Questions about Temporary Duty Travel #18

2. QUESTION: What if I choose to stay with a friend or relative?

ANSWER: Employees are permitted to stay with friends or relatives while on TDY. However, employees who rent from a place that is not commercially available to the public will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount. Instead, reimbursement will be limited to additional costs your host incurs in accommodating you, (e.g., the rental of a cot or bed). The extra costs paid to the friend or relative for such items may be reimbursed to the employee but must be substantiated with proof, such as a bill or statement. Reference: *FTR Section 301-11.12*

If an employee stays in a room or house of an individual who is in the business of renting rooms to the public, then the employee renting the accommodations may be reimbursed for the rental costs. The rental cost should not exceed the amount charged to the general public and the maximum per diem rate allowed for that location.

3. QUESTION: What if the property owner or the property management offer or agree to provide a receipt for a higher amount than the amount actually paid?

ANSWER: An employee may not submit a claim that does not accurately reflect the amount paid for lodging. Submitting a claim for more than the amount actually incurred is a violation of the US Code (18 United States Code 287, False, Fictitious or Fraudulent Claims) and can subject the employee to criminal penalties, or disciplinary or adverse action. Employees are authorized to claim up to the allotted lodging amount in a particular location. If the employee is not charged the maximum lodging per diem amount, the employee is not entitled to claim it. Employees should ensure that the lodging receipt reflects the actual costs incurred, net of any cash rebates or similar credits.

4. QUESTION: What should I do with vouchers or credits that I receive while staying at a commercial lodging facility?

ANSWER: Pursuant to Section 1116 of the National Defense Authorization Act for Fiscal Year 2002, the General Services Administration has issued the following regulation: Any promotional benefits or materials received from a travel service provider (i.e., frequent flyer miles, upgrades, or access to carrier clubs or facilities, and coupons for discounted meals or services provided by the hotel) in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government. Reference: *FTR 301-10 Amendment 104*

Date: 04/23/2002 11:01 AM

Sender: INS Broadcast

To: Karina Anchieta; Barbara Anderson; Diana L Anderson; George E Anderson; Peder A Anderson; Robert Anderson; Ross S Anderson; Ross TDY Anderson; Stuart Anderson; Kurt O Andolsun; Sharon Andrade; Thomas Andreotta; Brian Andrews; Chonlatit Andrews; Jim R Andrus; John J Andrzejewski; Jackie Angelelli; Jerald Angell; Franca B Angelucci; Karen S Angelucci; Reemployed Annuitants; Jacob A Antoninis; Gabriel Anwar; Vicki L Apodaca; Ermin Apolinario; Myriam Aponte; Gregory J Archambeault; Carlos W Archuleta; Karlee Arey; Jeannette C Armell; Daniel D Armendariz; Rose-Marie Armstrong; Sue E Armstrong; Jill Arndt; Kurt R Arneson; Paul Arnold; Norma A Arocho; Ismael Arreola; Mario Arreola; Susan K Arroyo; James K Arthur; Paul S Arthur; Larry G Arthurs; Octavio Arvizu; Kwabena Asamoah; Weekly Report ASC; Robert A Aserkoff; Jennifer L Ash; Earl L Ashton

Priority: Normal

Subject: Frequently Asked Questions #18-Lodging During Temporary Duty

Forwarded on behalf of: Office of Financial Management

MEMORANDUM FOR ALL INS EMPLOYEES

FROM: Judy R. Harrison
Assistant Commissioner
Office of Financial Management

SUBJECT: Frequently Asked Questions #18-Lodging During Temporary
Duty Travel

This is the eighteenth in a series of frequently asked question messages from the Office of Financial Management concerning policy for travel. The topic of this memorandum is Lodging During Temporary Duty Travel (TDY). If you have further questions, please contact Tamara Echols at (202) 307-4617 or Kurt Snyder at (202) 616-9939.

Please note that the information contained in these messages does not supersede specific language in the Immigration and Naturalization Service's bargaining unit contracts. Rather, the provisions of these messages should be understood and applied in a manner consistent with the requirements of the applicable labor agreement, if any.

General Rules

1. QUESTION: What types of accommodations should I obtain while on official TDY?

ANSWER: Employees are encouraged to stay in conventional lodging facilities, such as commercial hotels, motels and lodges, that have been approved by the Federal Emergency Management Agency (FEMA) as "approved accommodations." For a list of FEMA approved hotels, you may visit www.policyworks.gov/travel or make your reservations through your local Travel Management Center (TMC). Reference:

Federal Travel Regulation (FTR) Section 301-11.11

2. QUESTION: What if I choose to stay with a friend or relative?

ANSWER: Employees are permitted to stay with friends or relatives while on TDY. However, employees who rent from a place that is not commercially available to the public will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount. Instead, reimbursement

will be limited to additional costs your host incurs in accommodating you, (e.g., the rental of a cot or bed). The extra costs paid to the friend or relative for such items may be reimbursed to the employee but must be substantiated with proof, such as a bill or statement.

Reference: FTR Section 301-11.12

If an employee stays in a room or house of an individual who is in the business of renting rooms to the public, then the employee renting the accommodations may be reimbursed for the rental costs. The rental cost should not exceed the amount charged to the general public and the maximum per diem rate allowed for that location.

3. QUESTION: What if the property owner or the property management offer or agree to provide a receipt for a higher amount than the amount actually paid?

ANSWER: An employee may not submit a claim that does not accurately reflect the amount paid for lodging. Submitting a claim for more than the amount actually incurred is a violation of the US Code (18 United States Code 287, False, Fictitious or Fraudulent Claims) and can subject the employee to criminal penalties, or disciplinary or adverse action. Employees are authorized to claim up to the allotted lodging amount in a particular location. If the employee is not charged the maximum lodging per diem amount, the employee is not entitled to claim it. Employees should ensure that the lodging receipt reflects the actual costs incurred, net of any cash rebates or similar credits.

4. QUESTION: What should I do with vouchers or credits that I receive while staying at a commercial lodging facility?

ANSWER: Pursuant to Section 1116 of the National Defense Authorization Act for Fiscal Year 2002, the General Services Administration has issued the following regulation: Any promotional benefits or materials received from a travel service provider (i.e., frequent flyer miles, upgrades, or access to carrier clubs or facilities, and coupons for discounted meals or services provided by the hotel) in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.

Reference: FTR 301-10 Amendment 104

EXHIBIT 7



U.S. Department of Justice
Immigration and Naturalization Service
U.S. Border Patrol

TCA 100/5.7-C

Office of the Chief Patrol Agent

1970 W. Ajo Way
Tucson, Arizona 85713
(520) 670-6871

April 25, 2002

MEMORANDUM FOR GUSTAVO DE LA VINA
CHIEF, U.S. BORDER PATROL
WASHINGTON, DC

FROM: David V. Aguilar
Chief Patrol Agent
Tucson Sector

SUBJECT: Local Actions Taken on Allegations

The following information is being forwarded as a means of updating your office on certain specific actions taken by Tucson Sector on the allegations of impropriety on the part of Agents detailed into the Tucson Sector. The matter is currently being investigated by the Office of Inspector General and the INS Office of Internal Audit and was discussed by Office of Internal Audit Director John Chase at the Chief Patrol Agent breakout session on April 16th.

The allegations of improprieties related to housing rentals by Border Patrol Agents detailed into the Douglas Station were first received on May 8, 2001 by APAIC Norma King. APAIC King notified the Office of Inspector General and Tucson Sector Headquarters by way of memorandum on the same day.

Douglas Station

All incoming details are addressed by Supervisory Border Patrol Agent personnel at the time of their arrival and scheduling into the station rotations. Commencing with the May 20, 2001 detail rotation, the issue of improprieties relating to housing/rentals has been addressed. It has been made clear that an employee should not submit a claim that does not accurately reflect the amount paid for lodging. This procedure has been followed through the last detail rotation into the Douglas Station that ended on April 21, 2002.

MEMORANDUM TO GUSTAVO DE LA VINA, CHIEF
Subject: Local Actions Taken on Allegations

Page 2

Naco Station

The Naco Station received 10 detailers commencing February 11, 2001. The Naco Station has included the same housing/rental specific briefing and cautions since November 8, 2001. Naco continued this type of briefing through the last rotation that occurred on March 23, 2002.

Casa Grande - Tucson - Ajo Stations

The Casa Grande, Tucson, and Ajo Stations are currently receiving detailers as an augmentation to their West Desert operations. The detailers all receive the same type of briefing relative to housing/rental concerns.

EXHIBIT 8



U.S. Department of Justice
Immigration and Naturalization Service
U. S. Border Patrol
Office of the Chief Patrol Agent
San Diego Sector

SDC 50/1

2411 Boswell Road
Chula Vista, California 91914-3519

April 24, 2002

MEMORANDUM FOR SECTOR STAFF
PATROL AGENTS IN CHARGE,
SUPERVISORY SPECIAL AGENTS
ENFORCEMENT DEPARTMENT HEADS
ALL AGENTS
SAN DIEGO SECTOR

FROM: William T. Veal *William T. Veal*
Chief Patrol Agent

SUBJECT: Ethical Issues Involving Travel Vouchers

The Service has recently experienced a significant increase in travel voucher problems, ranging from simple mistakes to ethical violations to fraud warranting criminal prosecution. Since the San Diego Sector frequently details employees to other Sectors and to the Academies, all employees are reminded of the following provisions of the Federal Travel Regulations regarding reimbursement for lodging in particular.

Reimbursement for lodging must be based on actual cost. Receipts are required for reimbursement of all lodging expenses, and receipts must accurately reflect the amount actually paid for lodging costs. It is unacceptable to submit a claim using a receipt which reflects a higher amount than actually paid for lodging. The cost of lodging, excluding tax, may be reimbursed if it does not exceed the maximum lodging amount prescribed by the applicable per diem rate. Employees are encouraged to present hotels with tax exempt forms whenever possible; however, taxes on lodging may be reimbursed as a miscellaneous expense.

05/22/02 10:43 FAX 2025143478

HQBOR

→ SAN DIEGO

002/003



US Department of Justice
Immigration and Naturalization Service

HQFIN 80/9

202 APR 23 AM 11:54

Johanna Williams

425 I Street, NW
Washington, DC 20536

10/02

MEMORANDUM FOR ALL INS EMPLOYEES

FROM: Judy R. Harrison *Judy R. Harrison*
Assistant Commissioner
Office of Financial Management

SUBJECT: Frequently Asked Questions #18—Lodging During Temporary Duty Travel

This is the eighteenth in a series of frequently asked question messages from the Office of Financial Management concerning policy for travel. The topic of this memorandum is Lodging During Temporary Duty Travel (TDY). If you have further questions, please contact Tamara Echols at (202) 307-4617 or Kurt Snyder at (202) 616-9939.

Please note that the information contained in these messages does not supersede specific language in the Immigration and Naturalization Service's bargaining unit contracts. Rather, the provisions of these messages should be understood and applied in a manner consistent with the requirements of the applicable labor agreement, if any.

General Rules

1. QUESTION: What types of accommodations should I obtain while on official TDY?

ANSWER: Employees are encouraged to stay in conventional lodging facilities, such as commercial hotels, motels and lodges, that have been approved by the Federal Emergency Management Agency (FEMA) as "approved accommodations." For a list of FEMA approved hotels, you may visit www.policyworks.gov/travel or make your reservations through your local Travel Management Center (TMC). Reference: *Federal Travel Regulation (FTR) Section 501-11.11*

Memorandum for All Employees

Subject: Frequently Asked Questions about Temporary Duty Travel #18

Page 2

2. QUESTION: What if I choose to stay with a friend or relative?

ANSWER: Employees are permitted to stay with friends or relatives while on TDY. However, employees who rent from a place that is not commercially available to the public will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount. Instead, reimbursement will be limited to additional costs your host incurs in accommodating you, (e.g., the rental of a cot or bed). The extra costs paid to the friend or relative for such items may be reimbursed to the employee but must be substantiated with proof, such as a bill or statement. Reference: *FTR Section 301-11.12*

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ANSWER: An employee may not submit a claim that does not accurately reflect the amount paid for lodging. Submitting a claim for more than the amount actually incurred is a violation of the US Code (18 United States Code 287, False, Fictitious or Fraudulent Claims) and can subject the employee to criminal penalties, or disciplinary or adverse action. Employees are authorized to claim up to the allotted lodging amount in a particular location. If the employee is not charged the maximum lodging per diem amount, the employee is not entitled to claim it. Employees should ensure that the lodging receipt reflects the actual costs incurred, net of any cash rebates or similar credits.

4. QUESTION: What should I do with vouchers or credits that I receive while staying at a commercial lodging facility?

ANSWER: Pursuant to Section 1116 of the National Defense Authorization Act for Fiscal Year 2002, the General Services Administration has issued the following regulation: Any promotional benefits or materials received from a travel service provider (i.e., frequent flyer miles, upgrades, or access to carrier clubs or facilities, and coupons for discounted meals or services provided by the hotel) in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government. Reference: *FTR 301-10 Amendment*

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EXHIBIT 9



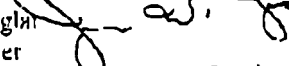
HQFIN 80/9

Office of the Commissioner

225 I Street NW
Washington, DC 20536

SEP 05 2002

MEMORANDUM FOR ALL EMPLOYEES

FROM: James W. Ziglar 
Commissioner
Immigration and Naturalization Service

SUBJECT: Claiming Expenses for Official Travel

It has come to my attention that a few Immigration and Naturalization Service (INS) employees have allegedly submitted claims for travel expenses that they did not incur. The allegations are being investigated and anyone found to have made or been party to such claims should expect severe disciplinary action and/or criminal penalties. Submitting false travel claims has ethical and misconduct implications for individual employees and will not be tolerated at the INS.

The allegations currently under investigation indicate that certain employees have participated in offers with lodging establishments to obtain receipts stating that the maximum lodging rate allowable for that location was paid when, in fact, a lesser rate was paid. Filing a voucher that claims a higher amount than actually paid is a false, fictitious, or fraudulent claim against the Federal Government. In locations with a large number of detailed Government employees, local merchants may approach employees with special offers or enticements to obtain Government business. While many such offers or enticements are legitimate and provide value to the Government, it is the responsibility of employees to avoid arrangements designed to enable them to claim travel expenses not actually incurred.

I know that most INS employees are honest and law abiding when filing their travel vouchers. However, please know that we intend to identify those individuals who file fraudulent claims and deal with them appropriately.

It is essential to always follow the Federal Travel Regulation in incurring official travel expenses and in filing claims for reimbursement of those expenses. If you do not know whether certain expenses are allowable, contact your local administrative officer or the Travel Management Section of the Office of Financial Management at (202) 616-9939.

EXHIBIT 10

MEMORANDUM

September 1, 1998

TO: Heads of Department Components

FROM: /s/
Stephen R. Colgate
Assistant Attorney General
for Administration

SUBJECT: Revised Policy Guidelines for Authorizing and
Administering Extended Travel Assignments

Attached are policy guidelines for authorizing and administering extended travel assignments. Since my issuance of guidance on March 3, 1997, the Taxpayer Relief Act of 1997 was enacted, rendering as non-taxable, extended travel assignments of the Department's investigators, prosecutors, and support personnel. Extended assignments for other program or administrative purposes may still be taxable under the Internal Revenue Code. The attached guidelines address the issue of taxability of such assignments.

These guidelines were developed to assist components in interpreting and implementing the federal and Department of Justice Travel Regulations, and to achieve greater consistency within the Department in managing extended travel assignments.

If you have any questions concerning these policies, please call James E. Williams, Director, Finance Staff, on (202) 616-5800.

Attachments

POLICY GUIDELINES FOR EXTENDED TRAVEL ASSIGNMENTS

September 1, 1998

Law and Regulations

The current statutory and regulatory requirements are as follows:

1. When travel to a single location is expected to last for an extended period, per diem should be reduced if the employee is able to obtain lodgings at a weekly or monthly rate that is less than the maximum allowable. [Federal Travel Regulation, 41 CFR § 301-7.12(b)]
2. When travel to a single location is expected to be prolonged or indefinite, consideration should be given to transferring the employee to the new location. [Supplement to Order DOJ 2200.11D, § 301-1.7]
3. Generally, when travel to a single location is expected to exceed or actually exceeds one year, certain reimbursements constitute taxable income to the employee. [26 U.S.C. §162(a)]
4. Travel which is certified as being for the purpose of investigation or prosecution of a federal crime is excepted from taxation under 26 U.S.C. § 162(a). The exception was enacted by The Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1204,

Policy Guidelines

The following are the policy guidelines of the Department which apply to all components. In each instance of extended travel assignments in excess of 90 days, a Memorandum of Understanding (MOU) must be executed between the employee, the official authorizing the assignment, and an official at the temporary duty site in accordance with item #6 below.

1. Extended Travel Defined: Extended travel is travel to a single location which exceeds 30 days.
2. Reduced per diem. When a travel assignment is expected to last more than 30 days and where it is possible to secure lodging and meals at less than the maximum allowable by travel regulations, total per diem, consisting of lodging

plus the M&IE allowance, should be reduced to a level of no more than 75 percent of the maximum allowable for temporary duty travel.

For an assignment that will last more than 90 days, per diem must be so reduced. Normally, per diem will be reduced well below the 75 percent level. Absent extenuating circumstances, the 75 percent level is the ceiling. There is no minimum entitlement. The actual amount authorized should approximate the employee's actual expenses. At the discretion of the authorizing officer, full per diem may be allowed for the first 30 days of an assignment that will last more than 90 days, to afford the detailed employee the opportunity to obtain lower cost lodging and meals.

Exceptions authorizing in excess of 75 percent of the maximum per diem must be approved by the Component Head or the Component Head's Principal Deputy, or other official delegated such authority by either the Component Head or his or her Principal Deputy.

As an example, consider a detail to Washington, DC. The per diem for Washington, DC is \$124 per night for lodging plus \$38 per day for M&IE. The maximum allowable for 30 days is \$4,860. Seventy-five percent of that amount is \$3,645, consisting of \$2,790 for lodging plus \$855 for M&IE. The \$3,645 establishes a ceiling.

	<u>Maximum</u>	<u>75%</u>
Lodging	\$124 X 30 = \$3,720	\$2,790
M&IE	38 X 30 = <u>1,140</u>	<u>855</u>
Total	\$4,860	\$3,645

Often, when lodging is secured on a monthly basis, the cost will be lower than 75 percent of the lodging allowance times 30 nights. For example, if an employee on an extended assignment in Washington obtains lodging for \$1,700 per month, a total per diem of \$2,555--53 percent of the maximum allowance--would be appropriate for a flat monthly rate. The actual rate to be allowed must be determined in each case, based on the expenses the detailed employee is anticipated to incur.

Other Expenses Considered. If the employee were to demonstrate the necessity to incur additional reasonable costs to maintain dual residences while on temporary duty, those additional costs may be considered in setting the

lodging allowance. In this example, if an employee were to demonstrate an additional \$100 in reasonable costs that are directly related to the temporary duty assignment, then the total allowance could be set at \$2,655 as a flat monthly rate. That amount, approximately 55 percent of the maximum, would consist of the actual cost of lodging plus \$100 for the additional costs relating to the primary residence and 75 percent of the M&IE allowance.

3. **Return Trips Home.** There is no regulatory limit to the number of trips an employee may be required to make for official purposes. When an employee is on an extended travel assignment, return trips to the employee's place of abode may be authorized based on a determination that it is advantageous to the government. Such trips, paid for by the government, should not be authorized more frequently than twice per month, based on length of the assignment and other particulars of the individual assignment. Fewer trips may be authorized. More frequent return trips home require special approval by the Component Head or his or her Principal Deputy, or other official delegated such authority by either the Component Head or his or her Principal Deputy, unless it is cost effective to authorize more frequent trips.

A specific case-by-case cost analysis is not required to conclude that the costs of periodic weekend return travel (including the costs of potential overtime, if applicable) are outweighed by the savings in terms of per diem, increased employee efficiency and productivity, as well as reduced costs of recruitment and retention of employees.

4. **Effect of Leave and other Official Travel on Reimbursement.**

When a detailed employee is on leave, or while away from the extended assignment on a return trip home, or away for official travel to a different temporary duty location, the reduced per diem will be further reduced by the daily M&IE allowance used to calculate the reduced per diem times the number of days the employee is away from the extended assignment location. When the employee is on official travel, per diem shall be paid for the location of that temporary duty. Only the M&IE portion of per diem paid at the extended assignment is not paid when the employee is away from the extended assignment location: all other expenses will continue to be paid in accordance with the extended travel authorization. If lodging for the extended

travel assignment had been on an actual basis rather than part of reduced per diem, it too could not be paid when temporary duty travel away from that location is authorized.

5. **Relocation option.** When it is known at the outset of an extended assignment, or when it becomes known that it will last for a year or more, the transfer option should be considered. A cost comparison need not be the sole basis for the transfer decision. Other factors, including but not limited to, personnel management, employee efficiency and productivity, short and long term program goals and strategies should be considered. After March 22, 1997, temporary relocations with limited reimbursements to employees may be authorized, in accordance with the Federal Employee Travel Reform Act of 1996 and implementing regulations to be issued by the General Services Administration.

6. **Taxability of Lodging and Meal Allowances.** The following applies to extended travel assignments, except for travel assignments which have been certified as being in direct support of investigation and prosecution of civil and criminal matters. When extended assignments exceed one year or when it is reasonably expected that the assignment will exceed one year, reimbursements (or payments made by the agency on behalf of the employee) for lodging and M&IE will constitute taxable income to the employee. Reimbursements for lodging and M&IE will constitute taxable income to the employee from the point that the reasonable expectation arises that the extended assignment will exceed one year.

Even though the term of the assignment may be difficult to determine at the beginning, the MOU must state an expectation of the term of the assignment.

The taxable payments/reimbursements are subject to federal, state, and local income tax withholding, FICA withholding (as appropriate), and Medicare withholding.

To reduce the number of instances in which it is necessary to tax employees for their travel reimbursements, the Department's policy is that per diem payments will not extend beyond one year, unless approved by the Component Head or his or her Principal Deputy or other official delegated such authority by either the Component Head or his

or her Principal Deputy.

7. **Exception to Taxation - Investigation and Prosecution.** The Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1204, excepts from the 1-year limitation on travel deductions under § 162 (a) of the Internal Revenue Code, any federal employee during any period for which such employee is certified by the Attorney General (or designee thereof) as traveling on behalf of the United States in a temporary duty status to investigate, or provide support services for the investigation of a federal crime. The Internal Revenue Service has interpreted this provision to also include travel to prosecute a federal crime. Accordingly, any extended travel assignments which have been certified as such, are not taxable. The Attorney General has delegated to the Assistant Attorney General for Administration, the authority to certify employees as traveling on behalf of the United States to investigate, litigate, or prosecute federal crimes. This certification is only necessary when the travel would otherwise be taxable as described in paragraph 6.
8. **Receipts Not Required.** When extended travel allowances have been authorized in accordance with these policies and have been documented through the required Memorandum of Understanding demonstrating the appropriate per diem reductions, the per diem rate payable on the payment voucher will be paid without receipts normally provided by the employee. (See 41 CFR § 301-7.12.)
9. **Memorandum of Understanding (MOU).** In each instance of extended travel assignments in excess of 90 days, an MOU must be executed between the employee, the official authorizing the assignment, and a senior official at the temporary duty site, (so that allowances may be monitored for equity among all DOJ employees at that location), and must specify all elements of reimbursement and conditions affecting those elements, as follows:
 - a. **Dates.** The MOU must state a beginning date and an expected ending date. The term of the MOU generally may not exceed one year; therefore, all MOUs must be renewed no less frequently than annually.

- b. **Cost.** MOUs must include the amount of per diem to be paid, demonstrating appropriate reduction and approvals in accordance with Department policy. The per diem authorized should always state separately, the lodging and the M&IE, even when the total per diem has been reduced in accordance with paragraph 2.
- c. **Residence.** The MOU must require the employee to certify whether or not he or she intends to maintain a personal abode in a real and substantial sense at the permanent duty station. The MOU must also require the employee to notify his or her supervisor if at some point during the assignment, the personal abode at the official duty station is no longer maintained, or has been changed in a substantial manner to reduce living expenses. The MOU must also require that the employee notify his or her supervisor of any change in the cost of lodging at the temporary duty location. Management should review such changes in expenses to determine whether any adjustment in the lodging allowance is necessary.
- d. **Return Trips Home.** The MOU must specify the frequency of return trips home that will be reimbursed by the Government, excluding trips required for official duty for purposes relating to the extended assignment or for other purposes.
- e. **Taxability.** The MOU must state whether or not any payments on behalf of, or reimbursements to, the employee are to be considered taxable income to the employee. Unless excepted under paragraph 6., MOUs for assignments expected to exceed one year must contain a specific provision that all per diem reimbursements are taxable income to the employee.