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## REPORT OF INVESTIGATION

### UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

**Investigation into the Abuse of Compensatory Time for Travel by a  
(b)(7)(C) in the (b)(7)(C) and Ineffective  
Supervision by Management**

FOIA exemption (b)(6) is also invoked in all instances where exemption (b)(7)(C) has been asserted.

**Case No. OIG-538**

**February 14, 2011**

**Volume I of II**

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## REPORT OF INVESTIGATION

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Case No. OIG-538

#### Introduction and Summary

The Securities and Exchange Commission (SEC) Office of Inspector General (OIG) received an anonymous complaint, dated August 13, 2009, regarding (b)(6) (b)(7)(C) a (b)(7)(C) (b)(7)(C) in the (b)(7)(C) (b)(7)(C). The complaint alleged leave and travel reimbursement abuses. Specifically, the complaint alleged that (b)(7)(C) was regularly leaving the office 30-50 minutes early each day without taking proper leave for the past six years. It further stated that, "late arrival[s] may also be occurring." The complaint added that (b)(7)(C) "requests for travel expense reimbursement for cash expenditures exceed[ed] official expenses as [an] unusually large volume and number of cash advances [were] requested by this employee." The complaint also requested an audit of (b)(7)(C) compensatory time for travel requests.

The OIG found in its investigation that (b)(7)(C) had been systematically requesting and receiving compensatory time for travel well beyond his actual hours in travel status. In fact, during the time period reviewed by the OIG, the OIG found that (b)(7)(C) claimed and received 63.5 hours of compensatory time for travel in excess of what he was entitled to under SEC regulations, costing the government \$5,274.74. In addition, the OIG found that (b)(7)(C) was overpaid for meals and incidental expenses (M&IE) on one occasion in the amount of \$71.00; and the OIG found that (b)(7)(C) was claiming reimbursement for telephone calls during travel totaling \$475.00, despite having an SEC-issued BlackBerry and acknowledging in testimony that he did not incur the phone call expenses he claimed. All of these infractions happened despite the supposed oversight of (b)(7)(C) managers, (b)(7)(C) and (b)(7)(C). The OIG found that (b)(7) approved all of (b)(7)(C) compensatory time for travel requests without question even though (b)(7) knew (b)(7)(C) trips did not take as long as (b)(7)(C) claimed. We also found that (b)(7)(C) approved (b)(7)(C) travel reimbursements, which included telephone call reimbursements, despite knowing (b)(7)(C) had an SEC-issued BlackBerry.

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In addition to the issues with (b)(7)(C) travel records, the OIG investigation found that (b)(7)(C) was regularly leaving the office early each day with (b)(7)(C) knowledge and approval. Although the OIG concluded that (b)(7)(C) was working a full 8½ hour day, the OIG found that (b)(7)(C) was not working his regularly scheduled hours. In addition, the OIG found that (b)(7)(C) would sometimes come in before 6:30 am, which is before the SEC's flexible band of hours, and count that time as hours worked, in violation of SEC policy.

While investigating the allegations against (b)(7)(C) contained in the anonymous complaint, the OIG discovered that just five months after the OIG issued a report citing another member of (b)(7)(C) staff, (b)(7)(C) for inappropriate and unprofessional conduct, and four months after (b)(7)(C) acknowledged in a memorandum that (b)(7)(C) had indeed acted inappropriately and unprofessionally, (b)(7)(C) promoted (b)(7)(C) to an SK-16 position and issued (b)(7)(C) a \$2,257 bonus.

The OIG is referring this report of investigation to management for disciplinary action against (b)(7)(C) (b)(7)(C). The OIG recommends that (b)(7)(C) (b)(7)(C) pay back \$5,274.74 in compensatory travel time overages, \$475.00 in unjustified telephone call reimbursements, and \$71.00 in excess M&IE. The OIG also recommends that (b)(7)(C) be required to either work his currently scheduled hours, taking leave when he leaves early, or request an alternate schedule consistent with Article 7 of the Collective Bargaining Agreement (CBA).

The OIG further recommends that (b)(7)(C) and (b)(7) receive training on SEC policies and rules concerning compensatory time for travel. Additionally, the OIG recommends that (b)(7) and (b)(7)(C) receive management training.

The OIG also recommends that the Ethics Office issue an SEC-wide e-mail reminder concerning compensatory time for travel, including specific information about using the mandatory *Worksheet for Determining Amount of Compensatory Time for Travel*.

### **Scope of the Investigation**

The OIG obtained and reviewed (b)(7)(C) building access records from January through October 2009. We also requested and reviewed (b)(7)(C) travel records and his time and attendance records for the period January 2009 to September 2010. The OIG also reviewed personnel records for (b)(7)(C) and (b)(7)(C).

The OIG took on-the-record, under-oath the testimony of the following individuals:

- (1) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C), Securities and Exchange Commission; taken on November 19, 2010 (b)(7)(C) Testimony Tr.”). Excerpts of Testimony Transcript attached at Exhibit 1.
- (2) (b)(7)(C) (b)(7)(C), (b)(7)(C), Securities and Exchange Commission; taken on December 3, 2010 (b)(7)(C) Testimony Tr.”). Excerpts of Testimony Transcript attached at Exhibit 2.

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(3) (b)(7)(C) (b)(7)(C) (b)(7)(C) (b)(7)(C),  
Securities and Exchange Commission; taken on December 20, 2010  
(b)(7)(C) Testimony Tr.”). Excerpts of Testimony Transcript attached at  
Exhibit 3.

### **Relevant Statutes, Regulations, and Policies**

The Commission's Regulation Concerning Conduct of Members and Employees of the Commission (hereinafter "Conduct Regulation"), at 17 C.F.R. §§ 200.735-1 *et seq.*, sets forth the standards of ethical conduct required of Commission members and employees (hereinafter referred to collectively as employees). The Conduct Regulation states in part:

The Securities and Exchange Commission has been entrusted by Congress with the protection of the public interest in a highly significant area of our national economy. In view of the effect which Commission action frequently has on the general public, it is important that . . . employees . . . maintain unusually high standards of honesty, integrity, impartiality and conduct. . . . [and] be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest. . . .

17 C.F.R. § 200.735-2.

The SEC Compensatory Time for Travel Policy, *SEC Human Capital Directives and Procedures*, May 9, 2006, sets forth the following guidelines:

Chapter 2-1:

Employees will be credited with compensatory time off for time in a travel status if:

- 1) The employee is required to travel away from the official duty station; and
- 2) The travel time is not otherwise compensable hours of work under other legal authority.

Chapter 2-2:

Time in travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station and the usual waiting time that precedes\* and/or interrupts such travel subject to the following exclusions:

- 1) Meal periods during actual travel time or waiting time are not creditable as time in a travel status.



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- 2) If an employee experiences an extended waiting time between actual periods of travel during which the employee is free to rest, sleep or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.

\*Acceptable "waiting time that precedes" travel is ninety (90) minutes prior to the original scheduled departure time for a domestic flight and three (3) hours prior to the original scheduled departure time for international flights.

#### Chapter 2-3:

D. Multiple-Day Travel. If an employee is on a multiple-day travel assignment and chooses, for personal reasons, not to use temporary lodgings but to return home at night or on a weekend, only travel from home to the temporary duty station on the first day and travel from the temporary duty station to home on the last day is qualifying as time in a travel status and is subject to deduction of normal commuting time. Travel to and from on other days is not creditable travel time unless the SEC determines that credit should be given based on the net savings to the Commission from reduced lodgings costs.

#### Chapter 2-4:

If an employee is required to travel between home and a transportation terminal (airport, train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time and is not creditable as time in a travel status.

#### Chapter 3-2:

Employees must complete SEC Form Worksheet for Determining Amount of Compensatory Time for Travel. The completed worksheet must be submitted at the time of and must be consistent with all time claimed on the Travel Voucher.

The SEC's *Collective Bargaining Agreement Between the United States Securities and Exchange Commission and the National Treasury Employees Union, 2007*, sets out the following regarding work schedules:

#### Article 7, Section 2 - Core Hours:

A. The Employer's core hours are the established duty hours within a specified tour of duty during which every full-time employee (who is not on an approved absence) is required to be at work.

B. At the Employer's Headquarters Offices, the core hours during which every full-time employee must be scheduled to work are 10:00 a.m. to 3:00 p.m. EST, Monday-Friday.

#### Article 7, Section 3 - Flexible Hours Bands:

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A. The Employer's flexible hours or bands are the established duty hours within which an employee may request to schedule his or her arrival and departure times, so as to create a set tour of duty that varies from his or her Office's official business hours.

B. At the Employer's Headquarters Offices, the flexible bands are 6:30 a.m. to 10:00 a.m. EST and 3:00 p.m. to 7:00 p.m. EST, Monday-Friday.

C. An employee working a flexible schedule described below in Section 5.A. may report at set times during his or her Office's morning flexible band so long as the employee's hours of work are consistent with working his or her Office's designated core hours.

#### Article 7, Section 4 - Alternative Work Schedules: Generally

E. If the Employer approves an employee's request for an Alternative Work Schedule, that schedule will remain fixed, unless and until changed in accordance with this Article.

#### Article 7, Section 5 - Alternative Work Schedules: Available Schedules:

##### A. Flexible Work Schedule ("Flexitour") with Credit Hours.

1. A full-time employee on this Alternative Work Schedule has an 80-hour bi-weekly basic work requirement, and fulfills that requirement by working eight hours a day, Monday-Friday. The employee must be present for work during all of his or her Office's designated core hours, but may request set arrival and departure times within the established flexible bands.

#### Section 12 - Credit Hours (Conforming and Flexitour Schedules Only)

G. An employee may request to earn credit hours in 15-minute increments, subject to a 30-minute minimum. An employee may request to use credit hours in 15-minute increments.

L. A full-time employee may earn credit hours consistent with his or her office's morning and afternoon flexible bands, as well as the band for non-workday weekends. Therefore, credit hours may not be earned before or after the employee's Office's flexible and weekend bands. A part-time employee may earn credit hours within these bands as well as during his or her office's core hours.

### **Results of the Investigation**

#### **I. Abuse of Compensatory Time for Travel**

The OIG found that (b)(7)(C) (b)(7)(C) regularly requested and was approved for compensatory time for travel in excess of his actual travel. The OIG also found that (b)(7)(C) direct supervisor, (b)(7)(C) did nothing to verify that (b)(7)(C) was submitting correct accounts of compensatory time for travel, such as requiring the mandatory worksheet and/or questioning (b)(7)(C) when (b)(7)(C) submitted excessive hours for trips (b)(7)(C) and (b)(7) took together.

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After the OIG received an anonymous complaint questioning (b)(7)(C) compensatory time for travel requests, the OIG compared (b)(7)(C) travel vouchers, which included itinerary information such as flight and train arrival and departure times, with (b)(7)(C) time and attendance records, which indicated the amount of travel compensatory time (b)(7)(C) claimed. The OIG found that (b)(7)(C) claimed a total of 63.5 hours of compensatory time for travel more than he was entitled to during the 21 month period reviewed.<sup>1</sup> The OIG's analysis of (b)(7)(C) compensatory time for travel is contained in an attached narrative summary titled, *OIG Analysis of (b)(7)(C) Compensatory Time for Travel Overages* (OIG Analysis) attached at Exhibit 4.

**A. (b)(7)(C) Regularly Claimed Compensatory Time for Travel in Excess of his Actual Travel with his Supervisor's Approval**

According to the SEC's Compensatory Time for Travel Policy, known as the SEC Human Capital Directives and Procedures, employees may be credited with compensatory time off for travel when the employee is required to travel away from the official duty station and the travel time is not otherwise compensable hours of work. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-1, attached at Exhibit 5.<sup>2</sup> Accordingly, employees cannot claim compensatory time for travel during scheduled work hours or basic holiday hours because employees are entitled to their basic rate of pay for those hours. *Id.*; See also, *Questions and Answers on Compensatory Time Off for Travel*, Q27, attached at Exhibit 6.<sup>3</sup> The SEC Compensatory Time for Travel Policy further explains that travel status includes the usual wait that precedes an airline flight, defined as 90 minutes before a domestic flight and three hours before an international flight. *Id.* at Chapter 2-2. However, the policy does not indicate a creditable waiting time for a train trip.<sup>4</sup> *Id.* The policy specifically excludes from travel status the travel time to or from the transportation terminal within the limits of the duty station, which is considered to be equivalent to commuting time and is therefore not creditable as time in travel status. *Id.* at Chapter 2-4. The policy also states that if an employee is on a multiple-day travel assignment and chooses, for personal reasons, to return home on a weekend, only travel from home to the temporary duty station on the first day and travel from the temporary duty station to home on the last day qualifies as time in a travel status. *Id.* at Chapter 2-3.

In its investigation, the OIG found that (b)(7)(C) claimed excessive amounts of compensatory time for his travel in violation of the SEC Compensatory Time for Travel Policy outlined above. The OIG questioned (b)(7)(C) during testimony about several of his trips. (b)(7)(C) Testimony Tr. at 43-80. In one instance, (b)(7)(C) claimed 5½ hours of compensatory travel time

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<sup>1</sup> The OIG reviewed records for the period January 2009 to September 2010. The OIG did not include in its analysis situations where (b)(7)(C) claimed less than one hour over the allowed amount of compensatory time for travel in a given trip.

<sup>2</sup> The SEC Compensatory Time for Travel Policy, also called *SEC Human Capital Directives and Procedures*, can be found on the SEC Intranet at: <http://intranet.sec.gov/travel/policy.pdf>.

<sup>3</sup> *Questions and Answers on Compensatory Time Off for Travel* can be found on the SEC Intranet at: <http://intranet.sec.gov/travel/travelqa.pdf>.

<sup>4</sup> The OIG contacted (b)(7)(C) in the SEC's Office of Human Resources on 5/17/10 and confirmed that there is no creditable waiting time preceding a train trip.

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for a train trip on Sunday, (b)(7)(C), to New York City. *Id.* at 43-45. (b)(7)(C) acknowledged in his testimony with the OIG that the train ride to New York City takes only two hours and 49 minutes and the OIG pointed out to (b)(7)(C) that, according to MapQuest, (b)(7)(C) hotel in New York City was only eleven minutes from the train station. *Id.* at 43-44. The OIG then specifically asked (b)(7)(C) how he could get 5½ hours of compensatory time for such a trip and (b)(7)(C) explained his reasoning in the following exchange:

Q: ...Where do you get 5½ hours?

A: That's a good question, and I don't mean that to sound flip. Okay. So 2 hours and 49 minutes -- oh -- I know what I do. The reason why, and this is what I account for, when I come down, like I said, I leave early to allow for traffic, repairs, you know, flat tires and the like. If I get down here early, I count that time. Like I may be sitting in the train station, but I've gotten here early because I didn't have any problems. Like I said, I'll leave 6:00 for a 9:00 train. I get down here at 7:00 on a Sunday. I count that time as travel time.

\* \* \*

Q: But you think it's appropriate for a trip that took 2 hours and 49 minutes with an 11 minute drive from the airport for a total of three hours. Do you think it's appropriate to take over 5½ hours of compensatory travel time?

A: I thought it was appropriate.

Q: I'm asking you now if you think it's appropriate, looking at it?

A: I guess looking at it now in this light, I guess it looks wasteful.

*Id.* at 45-46.

As discussed above, SEC regulations proscribe no creditable wait time before a train trip and no creditable commuting time and accordingly, (b)(7)(C) was not entitled to be reimbursed for any time he was not actually travelling to New York. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-2, 2-4.

In addition to his trip on (b)(7)(C), between (b)(7)(C), (b)(7)(C) traveled to New York City four additional times by train on a Sunday, the first three times claiming six hours of compensatory travel time and the fourth time claiming seven hours. As the OIG Analysis attached at Exhibit 4 demonstrates, (b)(7)(C) claimed and was reimbursed for excessive time with respect to each of these trips.

In addition to claiming excessive amounts of compensatory travel time for Sunday trips to New York City, the OIG found that (b)(7)(C) also often claimed compensatory time for travel for trips that were mostly, or entirely, within business hours. (b)(7)(C) official business hours are

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(b)(7)(C). (b)(7)(C) Testimony Tr. at 19. On Tuesday, (b)(7)(C), (b)(7)(C) claimed 10 hours of compensatory travel time, in addition to his 8½ hour workday, for a weekday round-trip to New York City where (b)(7)(C) left Union Station on a 7:00 am train and arrived back to Union Station at 6:51 pm. *Id.* at 51. The OIG asked (b)(7)(C) about this trip in the following exchange:

Q: All right. So looking now at your itinerary for this day where you started at 7:00 in the morning and you arrived back in Union Station at 6:51 p.m., you tell me that it was appropriate for you to charge the United States Government 10 hours of compensatory travel time on that day?

A: I'm not sure how I got 10 hours, to be honest with you. That seems too high to me on this. I mean when I look at the front end of this, of 2 to 3 hours, and I look at the back end of 2 to 3 hours, I come up with 5 to 6 hours. Obviously, you know, there's 10 here. Now, how that got there, like that, I mean obviously I had to approve or enter. So I'm not going to try to say well, I don't know. I didn't do such a thing. I mean this doesn't look right, and I'm going to have to agree with you. That's wrong.

*Id.*

The OIG questioned (b)(7)(C) about an additional trip where on Friday, (b)(7)(C), (b)(7)(C) returned from a trip to New York City and records show he was back in the office at 2:51 pm and clocked out for the day at 2:53 pm. *Id.* at 53-54. The OIG asked (b)(7)(C) how he justified claiming two hours of compensatory time for travel for a trip where he came back to work and then left for the day, (b)(7)(C) before his regular work day ended:

Q: All right. But you clocked out at 2:53 p.m.

A: At 2:53 clocked out of the building, you mean?

Q: Right. You returned to Union Station at 2:51 p.m. You went into the office for two minutes. You clocked out at 2:53 and then went home for the day. So you went home for the day at 2:53 p.m.

A: Right.

Q: Your normal work hours are 'til [redacted].

A: Right.

Q: And you claimed compensatory travel time?

A: Right. And what I'm saying is for the back --

Q: So you left (b)(7)(C) early and claimed compensatory travel time.

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A: And I did it with the understanding that I'm still on travel. I'm not saying that this is right. I'm saying I did with my understanding that I was on travel; and, like I said, if I hit traffic, you know, if I hit bad traffic and got into something that was like over the hour, I would claim that.

Q: All right. But looking at it now, where you come back to work and leave (b)(7)(C) before your regular work hours, you shouldn't claim compensatory travel time.

A: I see what you mean. I see what you mean. I do see it.

Q: All right. Let's go then.

A: It looks rather foolish.

*Id.* at 54-55.

The OIG also questioned (b)(7)(C) about an additional trip on (b)(7)(C), where he returned home from Chicago on a work day and retrieved his car from Ronald Regan Washington National Airport parking lot at (b)(7)(C), just 20 minutes past his official work schedule, and yet claimed three hours of compensatory travel time:

Q: But let's look at this. Let's go ahead and look at Exhibit 10, at your parking stub.

A: Okay.

Q: And it looks like you got your car at (b)(7) from National Airport.

A: At (b)(7) from National.

Q: Which is just 20 minutes longer than your regular work hours?

A: Yeah. And I know what would have happened.

Q: So you got your car 20 minutes later than regular work hours, and claimed 3 hours of credit time, of compensatory travel time. How could that be? It was a regular work day. It was almost the same as if you worked regularly. You were 20 minutes later. Somehow you got 3 hours.

A: Well, looking at him in that perspective, I see exactly what you're saying, but I know what I was looking at. I know how I was looking at it then. I was doing it, and on any given day I will hit

bad traffic. You know. Whether I'm in the regular course of work or whether I'm on assignment, I mean, sometimes I do. Sometimes I don't. In either case, but that's the way I was doing this.

Q: All right. When you back out your commute time, you've got to back out the commute time based on traffic. Right? You have traffic when you regularly commute. Right?

A: Well, I was of the understanding that it was like the normal time, and that's why, like when I come in in the morning, like super early, I thought the normal time was like an hour. Like I can make it doorstep-to-doorstep in about an hour.

Q: Right. But your regular work hours are (b)(7)(C). So would the commute time that you back out be the commute time that it would take with respect to your regular work hours for (b)(7)(C)? So, in this case, if you work 20 minutes extra because you left Ronald Reagan airport at (b)(7)(C), there shouldn't be much difference in commute time.

A: Well, if that's the premise then there shouldn't be. Right. Okay.

*Id.* at 67-69.

The SEC travel regulations make clear that one may not include regular commuting time in one's calculation of compensatory time for travel. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapters 2-3, 2-4. Furthermore, where an employee travels from a transportation terminal within his official duty station (such as Ronald Reagan Washington National Airport), his entire commute from the transportation terminal to his home is not creditable time.<sup>5</sup> The SEC's *Questions and Answers on Compensatory Time off for Travel*, available on the SEC Intranet, further explains the policy as follows:

Q11: What if an employee travels to a transportation terminal within the limits of his or her official duty station?

A: An employee's time spent traveling outside of regular working hours to or from a transportation terminal within the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off.

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<sup>5</sup> Federal regulations provide that an agency may prescribe a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for determining entitlement to overtime pay for travel. 5 CFR 550.112(j) and 551.422(d). The SEC rules define an employee's official duty station as the geographic area surrounding the employee's worksite. See *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-3. The deducting of "normal commuting time" only comes into play when an employee is traveling outside his or her official duty station. *Id.*



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*Questions and Answers on Compensatory Time off for Travel, April 17, 2007, Q11.*

The OIG found several other examples of (b)(7)(C) claiming compensatory hours for travel after he returned to his official duty station. On one such occasion, (b)(7)(C) claimed two hours of compensatory travel time for a trip on (b)(7)(C), where he returned to Union Station at (b)(7)(C), six minutes before his official business hours ended. (b)(7)(C) Testimony Tr. at 70. On another occasion, (b)(7)(C) retrieved his car from Ronald Reagan Washington National Airport at 11:29 pm on a Friday night following a trip to Kansas City, yet he claimed compensatory time through midnight on Friday and one hour into the next day. *Id.* at 73.

In addition to claiming hours beyond his actual travel, (b)(7)(C) also claimed compensatory time for travel during business hours on a federal holiday and he claimed compensatory travel time when he chose to come home for the weekend while on a multi-week trip. *Id.* at 77, 63. These are both prohibited under the rules. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-1, 2-3 (D). According to SEC policy, employees may not earn compensatory time off for travel during basic holiday hours because they are entitled to their basic rate of pay for those hours. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-3 (D); *See also, Questions and Answers on Compensatory Time Off for Travel Q27*. Furthermore, if an SEC employee is on a multiple-day travel assignment and chooses, for personal reasons, to return home at night or on a weekend, only travel from home to the temporary duty station on the first day and travel from the temporary duty station to home on the last day is qualifying as time in a travel status. *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 2-3 (D). When asked about the rules regarding holidays, (b)(7)(C) said, "I'd have to plead ignorance." (b)(7)(C) Testimony Tr. at 76. (b)(7)(C) further admitted he was "totally unaware" that if he chose to go home for the weekend he could not claim travel compensatory time for that portion of the trip. *Id.* at 66.

In summary, the OIG found that (b)(7)(C) claimed and was reimbursed for 63.5 hours of compensatory travel time more than he was allowed under the rules and that (b)(7)(C) overages cost the U.S. government \$5,274.74.<sup>6</sup> When (b)(7)(C) was confronted in testimony with the documents showing his chronic padding of compensatory time for travel hours, (b)(7)(C) admitted that what he did was "not very good" and that it was "excessive" and "looks kind of foolish." *Id.* at 57, 58.

**B. (b)(7)(C) Supervisor, (b)(7)(C) did Nothing to Verify (b)(7)(C) Compensatory Time for Travel Claims**

The OIG found that (b)(7)(C) direct supervisor, (b)(7)(C)(b)(7) approved all of (b)(7)(C) compensatory time for travel requests without question and did nothing to verify (b)(7)(C) compensatory time for travel requests.

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<sup>6</sup> In 2009, (b)(7)(C) claimed 42.5 hours over, at a salary rate of \$(b)(7) per hour that comes to (b)(7)(C). From January through May 2010, (b)(7)(C) was 21 hours over, at a salary rate of (b)(7)(C) per hour that comes to (b)(7)(C) for a total of (b)(7)(C). (b)(7)(C) hourly salary rates were calculated based on his annual salary, divided by 26 pay periods, divided by 80 hours per pay period.)



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(b)(7)(C) (b)(7) (b)(7)(C) direct supervisor, is in charge of the (b)(7)(C) in (b)(7)(C) and has been a supervisor in the (b)(7)(C) since (b)(7). (b)(7) Testimony Tr. at 8, 9. Prior to working in (b)(7)(C), (b)(7) was an (b)(7)(C). *Id.* at 8.

(b)(7) testified that he approved all of (b)(7)(C) compensatory time for travel requests without verifying the number of hours (b)(7)(C) was requesting. *Id.* at 28. (b)(7) also testified that he never questioned any of (b)(7)(C) compensatory time for travel requests. *Id.* at 24. (b)(7) further stated that he had seen situations where (b)(7)(C) claimed more compensatory time for a trip than (b)(7) himself claimed for the same trip and yet he "didn't take action as a result." *Id.* at 29.

(b)(7) explained that he himself only put in for three hours of compensatory travel time when he traveled to New York City. *Id.* at 24-25. (b)(7) testified that he often travels with (b)(7)(C) and that he stays at the same (b)(7)(C) hotel in New York City as (b)(7)(C) does, which, according to (b)(7) is five or six miles away from the train station or a half-hour cab ride in traffic. *Id.* at 23, 31-32. (b)(7) testified that despite the fact that he put in only three hours for the same trip, he saw no problem with approving six hours for (b)(7)(C) as evidenced by the following exchange:

- Q: So for a Sunday train ride to New York City where you stayed at that North End Avenue, (b)(7)(C) Hotel, you said that three hours of compensatory time would be appropriate?
- A: That's what I would put down for myself, yes.
- Q: Okay. Let's say somebody put in six hours. Would you think that was?
- A: I would ask about that.
- Q: Okay. So when Mr. (b)(7)(C) put in six hours for a trip, did you ask about that?
- A: I may have at one point; and, you know, this is going way back here. So I'm going to give you some generalizations. It's not a specific conversation with him, but in general I get the impression that he gets to the train station early for any number of reasons; you know. Typically, he tells me he's further out, so it's not just the commute time. But, well, what if I get down there and I get stuck in traffic? Or, if I have some kind of mechanical failure, so I leave earlier to make sure I make it to the train station, or to the airport on time? And then I'm at the airport: I'm not just there an hour early; I may be there two hours early. So he wants to put in credit hours for the two hours that he's at the airport.
- Q: Right. But this is a train ride.
- A: Or at the train station.

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Q: So you think that six hours is appropriate number of compensatory time for travel for a trip to New York City?

A: Given the explanation that I just heard and I just described to you, yes.

Q: Okay. Now, when we asked Mr. (b)(7)(C) about this, he acknowledged it wasn't. It was excessive.

A: Okay.

Q: So Mr. (b)(7)(C) believes it's excessive.

A: All right.

Q: But you as a supervisor think it's okay; six hours for a trip to New York City?

A: I wouldn't say it was okay, but given the consideration, given the explanation I received from him.

*Id.* at 32-33.

(b)(7)(C) testimony demonstrated not only that he failed to properly review (b)(7)(C) travel requests but he also displayed a lack of concern about the excessive hours (b)(7)(C) was claiming.

**C. (b)(7)(C) and (b)(7) Disregarded the Mandatory Worksheet when Claiming and Approving Compensatory Time for Travel**

According to the *SEC Human Capital Directives and Procedures*, "Employees must complete SEC Form Worksheet for Determining Amount of Compensatory Time for Travel." *SEC Human Capital Directives and Procedures*, May 9, 2006, Chapter 3-2. The rule further states that, "The completed worksheet must be submitted at the time of and must be consistent with all the time claimed on the Travel Voucher." *Id.* However, the OIG found that (b)(7)(C) did not fill out the worksheet and (b)(7) did not require the worksheet, in violation of SEC policy.

During his OIG testimony, (b)(7) admitted that until the OIG contacted him in May, 2010, to request (b)(7)(C) compensatory time for travel worksheets, (b)(7) did not require any of his employees to submit the mandatory worksheet when requesting travel compensatory time. (b)(7) Testimony Tr. at 25, 28. In fact, when the OIG first contacted (b)(7) by telephone to request (b)(7)(C) worksheets, (b)(7) responded by saying, "Show me a supervisor that requires these worksheets. We don't do that here." *Id.* at 26. When asked whether or not he knew the worksheets were required, (b)(7) responded, "I'd have to look." *Id.*

The OIG further found that (b)(7) lacked a basic understanding of the rules pertaining to compensatory time for travel. Not only did (b)(7) seem unaware that (b)(7)(C) was required to submit the worksheet, (b)(7) also appeared unaware that (b)(7)(C) needed to subtract his

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commuting time to and from the local transportation terminals. In his OIG testimony, (b)(7) testified that he assumed the discrepancy between the amount of time he was claiming and the amount of time (b)(7)(C) was claiming for the same trips was due to (b)(7)(C) commute time. *Id.* at 29. When asked why he thought (b)(7)(C) commute time would be a factor, (b)(7) said, "I don't have a real answer for you there. It just seemed reasonable for (b)(7)(C)." *Id.*

However, when the OIG showed (b)(7) the compensatory time for travel worksheet during testimony, (b)(7) noticed the line item on the worksheet for subtracting commuting time and realized that (b)(7)(C) regular commuting time should not make a difference:

Q: Well, what's your understanding of the rules with regard to travel comp time and commute time?

A: Well, since you had brought the form out and I can look at the form, and if someone says 10 hours up here or five hours up here, then you would subtract from the five hours. You would subtract whatever these items are, like travel to and from, normal commuting time. You'd have to subtract that. Meal time, other personal time, travel time spent during regular work hours, all those would have to be subtracted. I see that here now.

Q: So, really, Mr. (b)(7)(C) further commute time shouldn't make any difference under the rules in terms of compensatory time for travel.

A: According to this, yes, it looks like that's very much the case.

*Id.* at 29-30.

As the title of the worksheet indicates, the worksheet's purpose is to assist SEC employees in determining the amount of compensatory time for travel they are entitled to under the rules. This purpose is further evidenced by the fact that the worksheet itself contains specific categories of time to be subtracted when computing time in travel. *Worksheet for Determining Amount of Compensatory Time for Travel*, attached at Exhibit 7.<sup>7</sup> In addition, the worksheet has an instructions page with detailed examples to further assist employees in determining what time is compensable. *Instructions for Receiving Credit for Compensatory Time for Travel*, attached at Exhibit 8.<sup>8</sup> By not requiring (b)(7)(C) to use the mandatory worksheet, (b)(7) and (b)(7)(C) missed a significant opportunity to learn the rules that apply to earning compensatory time for travel. (b)(7) testified that he had never received any training on the compensatory time for travel rules, although he acknowledged being aware that the rules were readily accessible on the internet. (b)(7) Testimony Tr. at 30.

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<sup>7</sup> Worksheet can be found at: [http://intranet.sec.gov/forms/internal\\_forms/comptravel.pdf](http://intranet.sec.gov/forms/internal_forms/comptravel.pdf).

<sup>8</sup> Worksheet Instructions can be found at: <http://intranet.sec.gov/travel/credtime.pdf>.

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In addition to not requiring the mandatory worksheet for his employees, (b)(7) indicated that he was unconcerned as to whether or not (b)(7)(C) required his own staff to submit the worksheets stating, "If he does, he does; but I let him run his branch." *Id.*

**D. (b)(7)(C) Supervisor, (b)(7)(C) (b)(7)(C) was Unaware of (b)(7)(C) Compensatory Time for Travel Overages**

(b)(7)(C) (b)(7)(C) (b)(7)(C) is (b)(7)(C) direct supervisor and (b)(7)(C) second-level supervisor. (b)(7)(C) Testimony Tr. at 10. (b)(7)(C) has been with the SEC since (b)(7)(C) and has been a supervisor since (b)(7)(C). *Id.* at 6, 8. In testimony with the OIG, (b)(7)(C) testified that he was unaware that (b)(7)(C) was claiming, and (b)(7)(C) was approving, excessive amounts of compensatory time for travel. *Id.* at 38. (b)(7)(C) said, "It surprises me." when told in testimony that (b)(7)(C) claimed more than 60 hours of excessive compensatory travel time. *Id.* at 45.

When confronted with the specifics of the time (b)(7)(C) claimed for his trips, (b)(7)(C) confirmed that (b)(7)(C) request were excessive. When asked what he thought of (b)(7)(C) claiming six hours of compensatory time for a trip to New York by train, (b)(7)(C) responded, "I would find that out of the range of what I would expect as normal." *Id.* at 35. (b)(7)(C) response to being shown that (b)(7)(C) claimed 10 hours of compensatory travel time for a weekday round-trip to New York City was, "I think that's crazy." *Id.* at 37.

(b)(7)(C) testified that he believed it was a supervisor's duty to be sure employees are not claiming hours beyond actual travel. *Id.* at 33-34. When asked how (b)(7)(C) supervisor, (b)(7)(C) (b)(7)(C) could have missed all those exaggerated hours of compensatory travel time (b)(7)(C) replied, "He wasn't paying attention." *Id.* at 45. However, (b)(7)(C) also testified that he too does not require, and has never received, the mandatory worksheet from any of his employees. *Id.* at 30. And when asked about the compensatory time for travel rules, (b)(7)(C) said he "generally doesn't think about them." *Id.* at 31.

## II. Allegations Regarding Travel Expense Reimbursements

The anonymous complaint also alleged that (b)(7)(C) requests for travel expense reimbursement exceeded his expenses. It further raised concerns about the large number of cash advances (b)(7)(C) requested. The OIG analyzed these issues below, discovering that (b)(7)(C) not (b)(7)(C) was responsible for reviewing and approving (b)(7)(C) travel vouchers. (b)(7)(C) testified that in (b)(7)(C), travel vouchers can only be approved at the Assistant Director level or above. (b)(7)(C) Testimony Tr. at 33. So although (b)(7)(C) as (b)(7)(C) time keeper, was responsible for approving (b)(7)(C) compensatory time requests, it was (b)(7)(C) who reviewed (b)(7)(C) actual travel vouchers and expense reports. (b)(7)(C) Testimony Tr. at 27.

**A. (b)(7)(C) Abuse of Personal Telephone Call Reimbursement**

In reviewing (b)(7)(C) travel expense reports, the OIG found that (b)(7)(C) (b)(7)(C) regularly requested reimbursement of the maximum \$5 per day for personal phone calls for the trips he took during the 18-month period reviewed. The OIG found that (b)(7)(C) claimed a total of \$475 in personal phone call reimbursement during that period. However, the OIG found that (b)(7)(C) did

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not incur such phone call expenses and, in fact, had an SEC issued BlackBerry during that period, which he could have used to make phone calls at no additional expense to the SEC.

According to SEC travel policy, the SEC will reimburse employees for personal phone calls while on travel status up to a limit of \$5 per day for domestic phone calls. *Travel Policy for SEC Employees*, January 6, 2010, Policy #100, attached at Exhibit 9. However, according to the SEC's Office of Financial Management, "for those employees with SEC issued BlackBerries, the reimbursement should not be claimed as it is not necessary." See e-mails from (b)(7)(C) to OIG dated November 8, 2010, attached at Exhibit 10.

(b)(7)(C) admitted in testimony with the OIG that he was not making the amount of personal phone calls he was claiming on his travel expense reports.<sup>9</sup> (b)(7)(C) Testimony Tr. at 86. (b)(7)(C) also admitted that if he was going to make a personal call, he could have used "another mechanism to make those personal phone calls without charging the government." *Id.* (b)(7)(C) further testified that he realized that he "can't do that" and he has "stopped that."<sup>10</sup> *Id.* (b)(7)(C) also testified that his \$5 claims were "unsubstantiated" and "unjustified" and that the phone calls were something that he "shouldn't be claiming." *Id.*

The OIG further found that (b)(7)(C) (b)(7)(C) who reviewed (b)(7)(C) travel vouchers, failed to identify (b)(7)(C) overcharges. (b)(7)(C) testified that he reviews the travel expense reports for "pretty much (b)(7)(C)" including (b)(7)(C) (b)(7)(C) and (b)(7)(C)(b)(7)(C) to the tune of 40-50 per month. (b)(7)(C) Testimony Tr. at 26-27. (b)(7)(C) testified that he spends "not too great an amount of time, two to three minutes" reviewing each expense report. *Id.* at 27. (b)(7)(C) testified that he has never found a problem with (b)(7)(C) travel expense reports. *Id.* at 29.

(b)(7)(C) testified that he knew (b)(7)(C) had an SEC issued BlackBerry and acknowledged that it was not appropriate to charge the government \$5 per day in phone calls when one has an SEC issued BlackBerry. *Id.* at 44. (b)(7)(C) characterized his approval of the charges as "a mistake." *Id.*

#### B. (b)(7)(C) Extra M&IE Charge

In addition to (b)(7)(C) unjustified telephone call reimbursements that (b)(7)(C) failed to detect, the OIG found that (b)(7)(C) was paid an extra day of Meals and Incidental Expenses (M&IE) in the amount of \$71.00, which (b)(7)(C) also missed.

On (b)(7)(C), (b)(7)(C) returned home one day early from a trip to New York City. (b)(7)(C) Testimony Tr. at 80. However, (b)(7)(C) still received M&IE for the full day for the day he departed and for half of the following day, as if he had not returned early. *Id.* In his OIG testimony, (b)(7)(C) described the extra day of M&IE as "clearly a mistake" and said "it was not

<sup>9</sup> In addition to (b)(7)(C) admitting he did not make the calls, there is no indication on any of (b)(7)(C) hotel bills that he actually made any phone calls. A sample hotel bill is attached at Exhibit 11. (The rest of (b)(7)(C) hotel bills that were reviewed by the OIG are available upon request.)

<sup>10</sup> The last travel expense report (b)(7)(C) submitted that the OIG reviewed was dated (b)(7)(C), and did not contain a request for phone call reimbursement.

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an intentional thing” and the amount “should be reduced.” *Id.* at 80-81. The travel documents showed that (b)(7)(C) hand-marked his itinerary portion of his travel documents showing he returned one day early. *Id.* at 80. In addition, (b)(7)(C) hotel receipt, which was attached to his travel documents, plainly shows he checked out a day early. (b)(7)(C) Testimony Tr. at 43. However, (b)(7)(C) approved (b)(7)(C) travel expense voucher without calling into question (b)(7)(C) obvious error. *Id.* at 42.

(b)(7)(C) testified that approving (b)(7)(C) extra M&IE, “was a mistake.” *Id.* at 43. Further, (b)(7)(C) admitted that he did not have the time to spend reviewing the hotel information and that he does not do anything to check that dates are proper when reviewing travel vouchers. *Id.*

### C. Cash Advances

The anonymous complaint also raised concerns about the large number of cash advances (b)(7)(C) requested before his trips. The OIG found that although (b)(7)(C) regularly took cash advances before his trips, his cash advances generally came within the amount allowable. The Federal Travel Regulations (FTR) sets forth the expenses for which an employee can take a cash advance. See FTR Section 301-51.200, attached at Exhibit 12. These expenses include taxis, parking fees, gasoline, M&IE and other cash transaction expenses. *Id.*

(b)(7)(C) testified that he takes cash advances in the amount of \$100 per day per trip. (b)(7)(C) Testimony Tr. at 82. The OIG compared (b)(7)(C) cash advance amounts with his actual cash expenses and M&IE amounts during 2009. The OIG found that on most occasions, (b)(7)(C) cash advances came within the amount of cash expenditures and M&IE claimed on his travel vouchers.<sup>11</sup> On one occasion (b)(7)(C) did not provide a receipt for a cash advance, but he claimed ATM fees, so presumably, he took an advance. Travel regulations require a receipt for a cash advance. See FTR Section 301-51.202. However this reimbursement was approved by (b)(7)(C) and processed by the travel office anyway.

Although (b)(7)(C) seems to have been justified under the rules in taking cash advances, the rules are specific as to how far in advance an employee may take a cash advance. According to question # 44 of the *Travel Policy for SEC Employees*, dated January 6, 2010 (attached at Exhibit 13), employees can obtain a cash advance from an ATM no earlier than three days prior to departure.<sup>12</sup> However, on at least two occasions in 2009, (b)(7)(C) took his cash advance more than three days prior to a trip.<sup>13</sup>

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<sup>11</sup> On three occasions, (b)(7)(C) cash expenditures and M&IE were slightly less than his cash advance. (b)(7)(C) took a \$100 cash advance on (b)(7)(C) for a one day trip where his cash expenses and M&IE totaled \$64. On (b)(7)(C), he took a \$200 cash advance for a two day trip where his allowable expenses and M&IE totaled \$114. On (b)(7)(C) he took a \$100 cash advance for a one day trip where his expenses and M&IE totaled \$65. However, it is conceivable that (b)(7)(C) anticipated unrealized cash expenditures or that he used the extra cash to fill the gas tank of his personal vehicle to get to the common carrier, which is allowed under FTR 301-51.200 (4).

<sup>12</sup> The Travel Policy for SEC Employees can be found on the SEC Intranet at: <http://intranet.sec.gov/travel/sec-travel-policy.pdf>.

<sup>13</sup> On (b)(7)(C), (b)(7)(C) took a cash advance for a trip he departed for on (b)(7)(C). Also, on (b)(7)(C), (b)(7)(C) took a cash advance for a trip departing (b)(7)(C).



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The OIG asked (b)(7)(C) about (b)(7)(C) cash advances and whether (b)(7)(C) knew the rules on how far in advance of a trip one can get a cash advance. (b)(7)(C) Testimony Tr. at 48. (b)(7)(C) testified that he did not even know employees could get cash advances. *Id.* (b)(7)(C) maintained this position even though he reviewed dozens of (b)(7)(C) travel vouchers containing receipts for cash advances and claims for ATM fees for those advances, all of which (b)(7)(C) admitted he did not notice. *Id.* at 49.<sup>14</sup>

### III. Allegations Regarding Time and Attendance

The anonymous complaint also alleged that (b)(7)(C) was regularly leaving the office 30-50 minutes early each day without taking proper leave for the past six years. It further alleged that, "late arrival[s] may also be occurring."

Members of the staff of the Office of (b)(7)(C) in the (b)(7)(C) (b)(7)(C) are required to be in the office from 9:00 am to 4:00 pm each day to coincide with the hours of (b)(7)(C). (b)(7) Testimony Tr. at 14. Accordingly, (b)(7)(C) (b)(7)(C) official duty hours are (b)(7)(C). (b)(7)(C) Testimony Tr. at 19; (b)(7) Testimony Tr. at 14.

(b)(7)(C) schedule is considered an "alternative work schedule" or a "flexible work schedule" in that it differs from the SEC's Official Business Hours of 9:00 am to 5:30 pm but fulfills an 80-hour bi-weekly work requirement by working eight hours a day. *See, Collective Bargaining Agreement Between the United States Securities and Exchange Commission and the National Treasury Employees Union, 2007 (CBA), Article 7, attached at Exhibit 14.*<sup>15</sup> Once approved by the employer, an employee's alternative work schedule remains fixed. *Id.* at Section 4(E).

A review of (b)(7)(C) building access records from January to October 2009 revealed that (b)(7)(C) regularly arrived at work at approximately (b)(7)(C) and left work for the day around (b)(7)(C) pm. *See Building Access Records, attached at Exhibit 16.* Although (b)(7)(C) regularly left the office for the day before (b)(7)(C), the OIG found that by also arriving early, (b)(7)(C) was still working an average of 8½ hours a day. However, we found that (b)(7)(C) was not working his regularly scheduled hours.

(b)(7)(C) and (b)(7) both confirmed in testimony that (b)(7)(C) regularly leaves early, at (b)(7)(C) pm, and that (b)(7)(C) is the only one in the office who does so. (b)(7)(C) Testimony Tr. at 21-23;

<sup>14</sup> The OIG also reviewed (b)(7)(C) reimbursements for mileage and parking as (b)(7)(C) often charged large amounts, sometimes as much as \$211, for mileage and parking on his travel vouchers. Under FTR Section 301-10.306, employees are allowed reimbursement for mileage and parking if it is "advantageous to the government." The OIG contacted Barwood Taxi Service and was told that a trip from (b)(7)(C) home in (b)(7)(C) to Ronald Reagan Washington National Airport would run approximately \$159 one-way. Therefore, it seems (b)(7)(C) mileage and parking claims are justifiable under the regulation.

<sup>15</sup> A Memorandum, dated November 8, 2002, from the Office of Administrative and Personnel Management to Division Directors and Office Heads, explains that the work schedules portion of the CBA applies to non-bargaining unit employees. This memorandum is attached at Exhibit 15.

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(b)(7) Testimony Tr. at 14. (b)(7) said that he allows (b)(7)(C) to leave early because of (b)(7)(C) commute. (b)(7) Testimony Tr. at 15.

In addition to finding that (b)(7)(C) is not working his officially scheduled hours, the OIG investigation found a few instances where (b)(7)(C) was coming in before (b)(7)(C) and counting the time before (b)(7)(C) as hours worked, which is not permissible under SEC rules. See CBA at Article 7, Section 12(L). According to the CBA, "credit hours may not be earned before or after the employee's office's flexible and weekend bands." *Id.* The CBA defines those flexible bands for headquarters as beginning at 6:30 am. *Id.* at Section 3(B).

The OIG investigation found several occasions where (b)(7)(C) claimed credit hours for hours worked outside the SEC flexible Band. One example was on (b)(7)(C), when (b)(7)(C) according to building access records, was in the office from 2:44 am to 12:30 pm. (b)(7)(C) Testimony Tr. at 27; *See also* Building Access Records. Although (b)(7)(C) worked a total of 9.75 hours, only six of those hours were within the flexible band. *See* CBA at Article 7, Section 12(L). Instead of taking leave for the extra hours, (b)(7)(C) claimed an eight hour work day and an additional 1.25 hours in compensatory time. *See* (b)(7)(C) Time and Attendance Records for Pay Period 0902, attached at Exhibit 17.

Additionally, there were five occasions where (b)(7)(C) claimed credit hours for only .25 hours at a time, in violation of the CBA. (b)(7)(C) Testimony Tr. at 20. According to the CBA, while credit hours can be earned in 15-minute increments, they are subject to a 30-minute minimum. CBA Article 7 Section 12 (G).

(b)(7) testified that he approved (b)(7)(C) credit hours and that there were no problems with (b)(7)(C) credit hours. (b)(7) Testimony Tr. at 20. When asked if he knew what the SEC's flexible band of hours are, (b)(7) replied, "Not off the top of my head." *Id.* at 15.

(b)(7)(C) testified that he was unaware of (b)(7)(C) early departures and believed that (b)(7)(C) stayed until (b)(7)(C) each day. (b)(7)(C) Testimony Tr. at 24. (b)(7)(C) said he had never before heard that (b)(7) was allowing (b)(7)(C) to leave early:

Q: You weren't aware that Mr. (b)(7) has allowed Mr. (b)(7)(C) to leave 30 to 50 minutes early each day well before (b)(7)?

A: This is the first I'm hearing it.

Q: Does it concern you that this was the case?

A: Yes, it would. Yes, it does.

*Id.* at 25.



#### IV. Lack of Meaningful Action Following Prior OIG Report of Investigation

During the course of this investigation, the OIG discovered that in addition to not adequately reviewing (b)(7)(C) travel requests, expenses and records, (b)(7)(C)(b)(7) and (b)(7)(C) (b)(7)(C) recently promoted and awarded a bonus to an employee under their supervision who was cited for unprofessional conduct following an OIG investigation.

On March 29, 2010, the OIG issued a Report of Investigation ("ROI"), finding that (b)(7)(C) (b)(7)(C) a (b)(7)(C) in the (b)(7)(C), Office of (b)(7)(C) (b)(7)(C), (b)(7)(C), acted inappropriately by instructing a former employee to "check with him before contacting the Ethics Office." See *Allegations of Inappropriate and Unprofessional Conduct by a Current SEC Employee and Unauthorized Computer Access by a former SEC Employee*, (OIG 508) issued March 29, 2010, at 15, attached at Exhibit 18. The OIG also found that (b)(7)(C) gave inappropriate, pre-inspection instructions to certain SEC employees and may have lost his composure during disagreements with SEC employees. *Id.* at 15. The OIG referred the ROI to (b)(7)(C) for disciplinary action against (b)(7)(C) *Id.* at 16. In response to the ROI, on April 22, 2010, (b)(7)(C) issued a "Memo of Direction – Unprofessional Conduct" to (b)(7)(C). In that Memo, (b)(7)(C) stated that he believed the allegations in the OIG's ROI were "supported by evidence" and that (b)(7)(C) "provided inappropriate instructions." See *Memo of Direction – Unprofessional Conduct from (b)(7)(C) to (b)(7)(C) (b)(7)(C)* dated April 22, 2010, attached at Exhibit 19.

However, the OIG discovered that just four months after (b)(7)(C) issued the Memo of Direction for Unprofessional Conduct to (b)(7)(C) (b)(7)(C) promoted (b)(7)(C) from an SK-15 position to an SK-16 position that included a substantial pay raise.<sup>16</sup> (b)(7)(C) Testimony Tr. at 12. In addition to the promotion, (b)(7)(C) also awarded (b)(7)(C) a bonus of \$2,257 on September 12, 2010. *Id.* at 18. See also (b)(7)(C) Personnel Records, attached at Exhibit 20.

(b)(7)(C) explained the promotion during testimony by saying that (b)(7)(C) was "the best candidate" despite his poor judgment and inappropriate conduct. (b)(7)(C) Testimony Tr. at 15. However, (b)(7)(C) also admitted that the other internal candidates for the job did not have the same issues with judgment and conduct as (b)(7)(C) *Id.* at 15.

When (b)(7)(C) was asked how he could have awarded a bonus to someone who had so recently been cited for unprofessional conduct, (b)(7)(C) simply stated, "He did outstanding work and worked very, very hard." *Id.* at 17. (b)(7)(C) was then asked if there was any effect at all to the memo of direction in the following exchange:

Q: Was there any effect at all to this memo of direction if after he receives this, within a very short time period, he gets promoted and a bonus?

A: This all occurred -- I can't remember when this all occurred. This had occurred at least a year before. This was not during the rating

<sup>16</sup> (b)(7)(C) promotion raised his salary by \$4,795.

period. The letter was given to him during the rating period. All of the actions had occurred prior to that, and I had taken action when it occurred.

Q: When you made a determination about the rating period, whether to give him a bonus, you didn't factor in at all the April 22, 2010 memo of direction or the unprofessional conduct and poor judgment that led to this memo?

A: That's not so. I said it happened the year before, and I had taken action the year before.

Q: In what rating period vis-a-vis a bonus did you factor in the unprofessional conduct that Mr. (b)(7)(C) displayed as evidenced in this April –

A: That would have been the year before that. This is 2010. This would have been 2009.

Q: In what way did you factor in the memo of direction in the decision of whether to give Mr. (b)(7)(C) a bonus pursuant to a rating period in 2009?

A: It was given to me. Mr. (b)(7) would say these are the people that deserve bonuses. I would look at it and say yes, I think it's reasonable.

Q: Mr. (b)(7)(C) was denied a bonus at some period of time?

A: No.

Q: Again, in what rating --

A: I could have given him more.

Q: It was factored in that he would only get \$2,257 bonus?

A: In 2009, is what I'm talking about.

Q: In 2009, you factored in Mr. (b)(7)(C) unprofessional conduct in giving him a lower bonus than you would have otherwise?

A: That's correct.

Q: How much bonus did he get in 2009?

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A: I don't have any idea.

Q: How much was his bonus reduced because of the unprofessional conduct?

A: I don't know.

Q: Does it concern you at all in terms of mixed messages that you would issue a memo of direction and then a few months later he was getting a second bonus and promoted?

A: No.

Q: How come?

A: The man does outstanding work. He's a very, very hard worker. He made a poor decision with respect to the ethics violation. It was a very poor decision. I corrected it immediately. I had him apologize.

*Id.* at 18-19.

(b)(7)(C) contention that (b)(7)(C) was punished by receiving a lower bonus in 2009 is not supported by the evidence. The 2009 bonus and merit award that (b)(7)(C) received predated the OIG's ROI in that matter by several months. The ROI was not issued until March 29, 2010, and (b)(7)(C) bonus and merit increase for 2009 were effective in September and December 2009. Therefore, it does not seem possible that (b)(7)(C) could have reduced (b)(7)(C) 2009 bonus for his unprofessional conduct six months before the OIG issued its ROI.

Furthermore, the OIG found that (b)(7)(C) bonus and merit award in 2009 totaled \$4,575, which was \$472 more than he received in 2008. See (b)(7)(C) Personnel Records. The fact that (b)(7)(C) merit based pay went up in 2009 is further evidence that (b)(7)(C) was not financially penalized in 2009 for his unprofessional conduct.

### **Conclusion**

The OIG investigation found that (b)(7)(C) (b)(7)(C) over-charged the U.S. government 63.5 hours of compensatory time for travel during an 18-month period costing taxpayers \$5,274.74. Furthermore, the OIG investigation found that (b)(7)(C) overcharged the U.S. government \$475.00 in telephone call reimbursements, despite having an SEC issued BlackBerry, and \$71.00 in extra M&IE.

The OIG investigation further found that (b)(7)(C) does not work his regularly scheduled hours of (b)(7)(C), frequently leaving the office 30-50 minutes early without taking leave. The OIG investigation also found that (b)(7)(C) has been credited for working hours that are outside his office's flexible band and/or core hours.

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The OIG investigation found that (b)(7)(C) approved all of (b)(7)(C) compensatory time for travel requests without question and did nothing to verify (b)(7)(C) compensatory time for travel requests. The OIG investigation found that (b)(7) disregarded the compensatory time for travel rules, including not requiring the mandatory worksheet. The OIG investigation also found that (b)(7) allowed (b)(7)(C) to leave work early and to earn credit hours for working outside his office's flexible band and/or core hours.

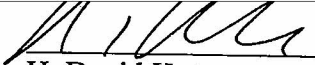
The OIG investigation found that (b)(7)(C) (b)(7)(C) did not adequately review (b)(7)(C) travel vouchers, missing several mistakes. Additionally, the OIG investigation found that (b)(7)(C) did not take appropriate action following a prior OIG investigation involving (b)(7)(C) (b)(7)(C).

Accordingly, the OIG is referring this report of investigation to management for disciplinary action against (b)(7)(C) (b)(7)(C). The OIG recommends that (b)(7)(C) (b)(7)(C) pay back \$5,274.74 in compensatory travel time overages, \$475.00 in unjustified telephone call reimbursements, and \$71.00 in excess M&IE. The OIG is also recommending that (b)(7)(C) be required to either work his currently scheduled hours, taking leave when he leaves early, or request an alternate schedule consistent with Article 7 of the CBA.

The OIG further recommends that (b)(7)(C) and (b)(7) receive training on the SEC's compensatory time for travel rules. Additionally, the OIG recommends that (b)(7) and (b)(7)(C) receive management training.

The OIG also recommends that the Ethics Office issue an SEC-wide e-mail reminder about the compensatory time for travel rules, including specific information about using the mandatory *Worksheet for Determining Amount of Compensatory Time for Travel*.

This report is being provided to the Deputy Chief of Staff, Office of the Chairman, Commissioner Elisse Walter, Commissioner Luis Aguilar, Commissioner Troy Paredes, the Director of the Division of Trading and Markets, the General Counsel, the Ethics Counsel and the Associate Executive Director for the Office of Human Resources.

<b>Submitted:</b>	(b)(7)(C)	<b>Date:</b>	<u>2-14-11</u>
<b>Concur:</b>	(b)(7)	<b>Date:</b>	<u>2/14/11</u>
<b>Approved:</b>	 H. David Kotz	<b>Date:</b>	<u>2/15/11</u>