

REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

Excessive Payment of Living Expenses in Contravention of OPM Guidance for a Headquarters Senior Official

Case No. OIG-561

Introduction

The Office of Inspector General (“OIG”) of the Securities and Exchange Commission (“SEC or Commission”) opened this investigation on April 27, 2011, after receiving a confidential complaint alleging the SEC engaged in wasteful spending in the hiring of Professor Henry T. C. Hu.¹ On September 9, 2009, Hu was hired through the Intergovernmental Personnel Act (“IPA”) to be the Director of the newly formed Division of Risk, Strategy, and Financial Innovation located in Washington D.C.² In addition to the SEC reimbursing the University of Texas (“UT”) \$314,198.26 for Hu’s salary and benefits for the period of September 9, 2009 through January 18, 2011, the SEC spent approximately \$120,000 for Hu’s housing, airfare to and from Austin, and living expenses (including meals) while in Washington, DC. During those sixteen months, Hu stayed in Washington, DC for the vast majority of the time including weekends, and the SEC paid for his living expenses. Although Hu returned to Austin, Texas, infrequently, the SEC also paid for those travel expenses.

Scope of the Investigation

In conducting this investigation into the complainant’s allegations, the OIG took sworn, on-the-record testimony of the following individuals:

- (1) Henry Hu, Professor, University of Texas Law School, taken on April 28, 2011. (“Hu Testimony Tr.”). Transcript of Testimony attached as Exhibit 3.

¹ Professor Henry T. C. Hu holds the Allan Shivers Chair in the Law of Banking and Finance at the University of Texas Law School. *See* Exhibit 1.

² Assignments to or from ... institutions of higher education ... are intended to facilitate cooperation between the Federal Government and the non-Federal entity through the temporary assignment of skilled personnel. ... *See* Provisions of the IPA Mobility Program, attached as Exhibit 2, at 1.

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- (2) (b)(7)(C) Program Analyst, Office of Financial Management (OFM), taken on May 23, 2011. (“(b)(7)(C) Testimony Tr.”). Transcript of Testimony attached as Exhibit 4.
- (3) (b)(7)(C) Program Specialist, OFM, taken on June 3, 2011. (“(b)(7)(C) Testimony Tr.”). Transcript of Testimony attached as Exhibit 5.
- (4) (b)(7)(C) OFM, taken on June 16, 2011. (“(b)(7)(C) Testimony Tr.”). Transcript of Testimony attached as Exhibit 6.
- (5) (b)(7)(C) Human Resource Specialist, Office of Human Resources (OHR), taken on June 23, 2011. (“(b)(7)(C) Testimony Tr.”). Transcript of Testimony attached as Exhibit 7.

The OIG also interviewed the following individuals:

- (1) Professor Hu; September 2, 2011. *See* Memorandum of September 2, 2011 Interview (“Hu Interview Memorandum”), attached as Exhibit 8.
- (2) Didem Nisanci, Chief of Staff, Office of the Chairman; September 6, 2011. *See* Memorandum of September 6, 2011 Interview (“Nisanci Interview Memorandum”), attached as Exhibit 9.
- (3) Mary Schapiro, Chairman; September 6, 2011. *See* Memorandum of September 6, 2011 Interview (“Schapiro Interview Memorandum”), attached as Exhibit 10.

The OIG attempted to obtain information from Diego Ruiz, the SEC's Executive Director who, as discussed below, was primarily responsible for developing the terms of Hu's IPA agreement. On May 18, 2011, the OIG sent an e-mail to Ruiz, requesting information on Hu's hiring. Ruiz failed to respond to the OIG's request.³

In addition, the OIG reviewed approximately 85,352 e-mails of current and former SEC employees relevant to this matter. The OIG also reviewed other documents related to this matter, including Hu's travel records, invoices from UT, and several IPA agreements between the SEC and various persons other than Hu.

³ Ruiz resigned from the SEC effective August 1, 2011.

Relevant Government Regulations

I. OPM Regulations

A. The IPA Program

[IPA] [a]ssignment agreements can be made for up to two years, and may be intermittent, part-time, or full-time

Cost-sharing arrangements for mobility assignments are negotiated between the participating organizations. The Federal agency may agree to pay all, some, or none of the costs associated with an assignment. Costs may include basic pay, supplemental pay, fringe benefits, and travel and relocation expenses.

. . . .

A Federal agency may pay the travel expenses authorized under the Federal Travel Regulation (FTR) (41 CFR chapters 301-304) chapter 301 of a Federal employee or non-Federal employee on an Intergovernmental Personnel Act assignment. An agency may pay a per diem allowance at the assignment location in accordance with FTR part 301-7, or . . . limited relocation expenses

. . . .

An agency may select between payment of a per diem allowance at the assignment location or the limited relocation expenses, but may not pay both. However, an agency may pay per diem for travel away from the assignment location, even if it pays the limited relocation allowances, so long as the employee does not travel to his/her official station. An agency should consider the cost to the Federal Government to be a major factor when determining whether to pay a per diem allowance at the assignment location or limited relocation allowances. An agency should also consider the duration of the assignment. A per diem allowance is meant for shorter assignments. The payment of per diem for an indeterminate period or a period of more than one year is taxable to an employee, so an agency should not pay a per diem allowance for an assignment expected to last more than one year, or for an indefinite period.

See Exhibit 2 at 3-4.

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B. Duty Station

. . . . The official worksite generally is the location where the employee regularly performs his or her duties. If the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.

See Exhibit 11 at 1.

The OPM Guide for Processing Personnel Actions . . . is considered by OPM as the best reference for understanding duty station and the location of an employee's work site. For most employees, the work site is the place where the employee "works, or at which the employee's activities are based, as determined by the employing agency;" i.e., "the location of the employee's desk or place where the employee normally performs his or her duties

See Revised June 20, 2001, GSA Human Resources Management Report on Duty Station Determinations, attached as Exhibit 12, at 1.

Results of the Investigation

I. In April 2009, the SEC's Chairman Approached Hu about Joining the SEC

On April 10, 2009, Stephen Cohen, then Senior Advisor to the Chairman, forwarded an op-ed piece written by Hu to Chairman Mary L. Schapiro and other senior SEC officials. See April 10, 2009, e-mail, attached as Exhibit 13. Hu's article discussed how Goldman Sachs's use of credit default swaps in connection with its loans to AIG had created a distorted incentive by permitting Goldman Sachs to avoid economic exposure to losses on those loans, while maintaining its rights to call those loans. *Id.* In his e-mail forwarding the article, Cohen stated, "In light of our discussion yesterday, I thought this article was particularly poignant. I wanted to make sure this group saw it. I think it is the kind of thought we are seeking in our Office of Smart People *Id.* The Chairman responded "This is an excellent piece" and her Chief of Staff, Didem Nisanci, added, "I thought so too, he is really widely respected." *Id.*

According to Hu, sometime in early April 2009, he received a voicemail message from Chairman Schapiro asking him to return her call. Hu Testimony Tr. at 21. Hu and the Chairman spoke around April 13, 2009 and during that call the

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Chairman asked Hu if he would like to head up a new unit that colloquially was known as "OSP" or "Office of Smart People," and explained that one of the areas that the unit would focus on was risk.⁴ *Id.* at 25-26.

II. The SEC Offered Hu an Unprecedented Financial Arrangement to Join the Commission

On May 11, 2009, approximately one month after Hu's initial conversation with Chairman Schapiro, Diego Ruiz, then the Executive Director of the SEC,⁵ sent an e-mail, to Nisanci stating "Concerning Henry Hu, there are a lot of questions on the relocation/housing issue that I don't have an answer for yet. I will get you an analysis of the issues and a recommendation on the best way forward tomorrow." Exhibit 14 Ruiz enlisted (b)(7)(C) OFM to help with those issues. (b)(7)(C) Testimony Tr. at 12, 14. According to (b)(7)(C) Ruiz wanted to know what type of reimbursement was available for relocation purposes. *Id.* at 14. On May 12, 2009, (b)(7)(C) e-mailed Ruiz the following answers to questions Ruiz had posed:

Can the SEC pay for the temporary quarters of a newly hired employee?

Generally NO.

Under what circumstances can the SEC pay for a newly hired employee's lodging?

1- Under a relocation agreement *and only for a limited period of time.*

2- Under extended travel with the following assumptions:

Assumptions:

FTE permanent duty station is Regional Office

Frequent or extended travel required from Region to Washington DC Headquarters and temporary or extended lodging is required

See May 12, 2009 e-mail, attached as Exhibit 15. (emphasis added).

⁴ The new unit was ultimately called the Division of Risk, Strategy, and Financial Innovation. Hu Testimony Tr. at 23.

⁵ As discussed above, Ruiz failed to respond to the OIG's request for information related to Hu's hiring.

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Ruiz then asked (b)(7)(C) and (b)(7)(C) if there was any way that the SEC could pay for Hu's living expenses while he was in Washington, DC. See (b)(7)(C) Testimony Tr. at 18-19; (b)(7)(C) Testimony Tr. at 13-15. They responded by suggesting that the SEC define his assignment location (or duty station) as Austin, Texas, and treat his travel to Washington, DC, as temporary duty travel ("TDY"). See (b)(7)(C) Testimony Tr. at 16-17. (b)(7)(C) testified that she told Ruiz:

We could put him on what's considered long-term TDY. And for the days that he is officially in Washington, D.C., even though his official duty station would read Austin, Texas because that's where his home is; that's where the University of Texas is -- he could come on a travel order to Washington, D.C. We would pay for his per diem, his hotel, or he could rent an apartment, and I believe that's what he did. He rented like one of those long-term stay places. And we would pay meals, and we could pay his per diem up to the per diem rate for the time he was here. That was an option.

Id. at 16-17.

On May 18, 2009, Ruiz sent Nisanci a memorandum describing two mechanisms for bringing Hu to the SEC: (1) joining as a federal employee or (2) pursuant to an IPA agreement. See May 18, 2009 Memorandum from Diego Ruiz to Didem Nisanci (the "Ruiz Memorandum"), attached as Exhibit 16. In explaining the two options, Ruiz described the IPA option as "the chief way in which we hire academics for short terms." *Id.* With respect to the agency's handling of relocation expenses under an IPA agreement, Ruiz provided the Chairman's Office and Hu with information about only one way to reimburse Hu for those expenses:

The SEC may reimburse Professor Hu, up to the federal government per diem rates, for travel and lodging expenses incurred while at his assignment location (Washington, DC). The per diem rates for lodging in Washington currently is between \$229 and \$273 daily, depending on the month of the year. Professor Hu would be eligible for reimbursement at the daily rates only for those days in which he was in Washington. The payment of a per diem for a period of more than one year is taxable to an employee,

Id.

With respect to the agency's handling of relocation expenses if Hu were hired as a federal employee, Ruiz informed the Chairman's Office and Hu that, "As a federal employee, Professor Hu could be eligible for reimbursement of his relocation costs up to \$9,000." *Id.*

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The Ruiz Memorandum contained a misimpression that a per diem arrangement was the only way to reimburse Hu for relocating to SEC Headquarters in Washington, DC. *Id.* The federal travel regulations allow an agency entering into an IPA agreement to offer the recipient either "limited relocation expenses" or a per diem allowance for living expenses during the period of the assignment. *See* Exhibit 2 at 4-5. "An agency may select between payment of a per diem allowance at the assignment location or the limited relocation expenses, but may not pay both." *Id.*

According to OPM, when deciding whether to offer an IPA candidate limited relocation expenses or a per diem allowance for living expenses during the period of the assignment:

An agency should consider the cost to the Federal Government to be a major factor when determining whether to pay a per diem allowance at the assignment location or limited relocation allowances. An agency should also consider the duration of the assignment. A per diem allowance is meant for shorter assignments. The payment of per diem for an indeterminate period or a period of more than one year is taxable to an employee, so an agency should not pay a per diem allowance for an assignment expected to last more than one year, or for an indefinite period.

Id.

Consistent with OPM's guidance, SEC policy had been to cap the "limited relocation expenses" referenced in the federal travel regulations at \$9,000. *See* e-mail dated April 3, 2002 from (b)(7)(C) to Jayne Seidman regarding IPA moving expenses attached as Exhibit 17. Prior to Hu's arrangement, according to (b)(7)(C) (b)(7)(C) OFM Program Analyst, the SEC had only offered IPA candidates up to \$9,000 for relocation expenses as part of its IPA arrangements. (b)(7)(C) Testimony Tr. at 26, 36-37, 61. (b)(7)(C) testified that "No IPA person has ever gotten [the temporary quarters per diem allowance] as long as I've been doing relocation." *Id.* at 36-37. (b)(7)(C) stated that the SEC's standard IPA agreement included a provision stating that the SEC will pay up to \$9,000.00 for relocation expenses. *Id.* at 26. (b)(7)(C) Program Specialist, OFM, also confirmed that the SEC's practice in connection with IPA agreements was to offer up to \$9,000 for travel relocation expenses. (b)(7)(C) Testimony Tr. at 21. (b)(7)(C) Human Resource Specialist, OHR, who helped finalize Hu's IPA contract testified similarly, that every IPA agreement she had seen at the SEC only offered the \$9,000 relocation expense option. (b)(7)(C) Testimony Tr. at 32-33.

⁶ (b)(7)(C) has been responsible for processing travel vouchers, approving travel orders, travel reimbursements, and counseling individuals who are relocating for a position at the SEC. (b)(7)(C) Testimony Tr. at 6-7.

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The OIG reviewed a sample of the SEC's IPA agreements from 2003-2011. See Exhibits 18-26. All of those agreements included the provision paying relocation expenses up to \$9,000. *Id.* For example, the most recent SEC IPA agreement, effective June 21, 2011, stated:

[The IPA recipient] will be entitled to relocation travel funds as provided in the Federal Travel Regulations, through reimbursement directly to him. Moving expenses will be paid up to the maximum rate of \$9,000 each way, for moving expenses related to initial move to the Washington, DC metropolitan area and return to the [IPA recipient's current location].

See Exhibit 26.

On May 26, 2009, Nisanci offered Hu the option of joining as a federal employee or pursuant to an IPA agreement, and described those two options to Hu by sending him the Ruiz Memorandum. See May 26, 2009 e-mail from Didem Nisanci to Henry Hu, attached as Exhibit 27. Nisanci told the OIG that her understanding from Ruiz was that his description of the IPA option in the Ruiz Memorandum was consistent with the IPA arrangements that the SEC had offered other individuals. See Nisanci Interview Memorandum.

On May 29, 2009, (b)(7)(C) e-mailed Ruiz the following answers to more questions that Ruiz had posed:

Can the govt pay for his Austin to DC air fare?

Yes (confirmed with (b)(7)(C)).

Is there a limit on number of trips?

No limit as long as it is officially necessary because he is NOT relocating.

Does this have to be defined in the the [sic] agreement?

Yes, and the agreement must specify that Professor HU [sic] will be working out of Huston [sic] (or wherever his home is and will be commuting to DC as officially necessary, even if it is, weekly, monthly, etc.).

See May 29, 2009 e-mail, attached as Exhibit 28.

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On June 5, 2009, Hu chose to join the SEC pursuant to an IPA arrangement as that arrangement had been described and offered to him in the Ruiz Memorandum. See Hu Interview Memorandum. Hu stated that he did not negotiate the terms of that arrangement with the SEC.⁷ *Id.* According to Hu, he simply accepted the offer that was presented to him as “the chief way in which [the SEC] hire[d] academics.” *Id.* Hu acknowledged that he chose the IPA option, in part, because it was more lucrative irrespective of any differences in how his relocation expenses would be handled.⁸ Hu Testimony Tr. at 34.

III. Staff from the SEC's Office of Financial Management Working on Hu's IPA Expressed Concern About the Agreement to Pay Hu's Living Expenses

(b)(7)(C) testified that she was concerned and upset when (b)(7)(C) told her about the decision to reimburse Hu as if he were on “extended TDY travel.” (b)(7)(C) Testimony Tr. at 38-39. (b)(7)(C) testified that she expressed concern to (b)(7)(C) about the appropriateness of the arrangement and discomfort at approving the travel vouchers pursuant to the arrangement. *Id.* at 37. In response, (b)(7)(C) told her “I’ll deal with it. We have nothing to worry about.” *Id.* On May 29, 2009, (b)(7)(C) e-mailed Ruiz, “As a note, I already alerted (b)(7)(C) and she will be making sure that Professor Hu’s travel vouchers will not encounter any problem.” See May 29, 2009 e-mail attached as Exhibit 23.

(b)(7)(C) acknowledged that she and Ruiz had some reservations about the cost of the arrangement. (b)(7)(C) Testimony Tr. at 16. (b)(7)(C) explained, “There was a lot

⁷ (b)(7)(C) recalled a conversation with Hu that occurred sometime in May 2009 during which she stated that he could not be reimbursed by the SEC for his temporary lodging expenses and could only be reimbursed for relocation expenses up to \$9,000. (b)(7)(C) Testimony Tr. at 33. (b)(7)(C) testified that she had not seen an IPA agreement for Hu when she had this conversation, but that her statement to Hu was based on the relocation expense provision that she had seen in every other SEC IPA agreement. *Id.* at 32. According to (b)(7)(C) Hu responded, “I wasn’t told that I only get \$9,000” and “he said that he was going to go back and talk to [the former Associate Executive Director for the Office of Human Resources].” *Id.* at 36-37. Hu told the OIG that he did not recall having had such a conversation with (b)(7)(C) or anyone at the SEC. See Hu Interview Memorandum. However, he also told the OIG that if such a conversation took place, he would have brought it to someone’s attention that the information was contrary to the terms of the offer that had been made to him as described in the Ruiz Memorandum. *Id.* Nisanci told the OIG that she had never heard that Hu had balked at what he was offered regarding his travel and living expenses. See Nisanci Interview Memorandum. Similarly, Chairman Schapiro told the OIG that she did not recall ever hearing that there were any problems with what Hu was offered or that he had balked at what was offered. See Schapiro Interview Memorandum.

⁸ According to the Ruiz Memorandum, the maximum annual salary Hu could have received as a federal employee was \$227,300. See Exhibit 16. Under the IPA agreement that the SEC offered, Hu kept his UT salary of \$307,611. Hu Testimony Tr. at 34. The SEC reimbursed UT \$226,905 for part of his salary and benefits for fiscal year 2009, and \$87,293.26 for the period of September 1, 2010 through January 18, 2011. See invoices attached as Exhibit 29. In addition, the SEC paid Hu’s living expenses and airfare to and from Austin for the 16 month period. Consequently, Hu received a total of \$120,279.64 for travel related expenses during that period. See travel records attached as Exhibit 30. In total, the SEC paid \$434,470.62 for Hu’s services.

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of question about the financial impact in being able to meet the -- I don't know if I want to say what Mr. Hu was willing to, you know, to do." *Id.* (b)(7)(C) testified that the arrangement for Hu "troubled me as a taxpayer." *Id.* at 26. (b)(7)(C) testified that when she and (b)(7)(C) told Ruiz about the TDY option, they told him that it would be very expensive and they "cautioned against using that option because it could be extremely expensive if he were to stay three and four weeks at a time versus relocating him." (b)(7)(C) Testimony Tr. at 16. According to (b)(7)(C), Ruiz "took it under advisement" and responded to (b)(7)(C) that "he was speaking with the Chairman and Didem and so on about the best method to get him here because evidently he had great knowledge that we needed." *Id.* at 16-17.

However, Nisanci told the OIG that she did not recall Ruiz discussing the TDY option and the staff's reservations about that option with her. *See* Nisanci Interview Memorandum. Nisanci also did not recall Ruiz ever speaking to her generally about the cost of the arrangement and the potential for that cost to be excessive. *Id.* Moreover, Nisanci told the OIG that she was never told that the Hu arrangement was "out of ordinary." *Id.* Her understanding was that Ruiz was developing an IPA for Hu that was fully consistent with all applicable policies and guidance. *Id.* Nisanci told the OIG that she would never have supported an arrangement with Hu that was not consistent with those policies and guidance. *Id.*

Similarly, Chairman Schapiro told the OIG that she had understood that the IPA arrangement that Ruiz developed for Hu was similar to all of the other IPA agreements the SEC had utilized in the past. *See* Schapiro Interview Memorandum. She also did not recall ever having been told that Hu's IPA arrangement was unusual or that it could be excessively costly. *Id.*

In fact, Ruiz suggested to (b)(7)(C) in a May 13, 2009 e-mail including a cap of \$25,000 on the amount of travel expenses the SEC would pay in Hu's IPA agreement:

The IPA would state that Professor Hu would be allowed to telework, as per SEC policy, but that he would be expected to travel to and be present at headquarters for extended periods of time over the term of the agreement. This will enable the agency to reimburse him according to federal government per diem rates for his travel and living expenses, including lodging expenses, while on official travel. I would recommend specifying in the IPA a limit on lodging reimbursement of approximately \$25,000.

See May 13, 2009 email from Diego Ruiz to (b)(7)(C) attached as Exhibit 31. However, we found no evidence that the concept of capping his lodging expenses was ever presented to Hu and no such cap was included in his IPA agreement. *See* Hu Testimony Tr. at 31-33; Hu's IPA Agreement dated August 28, 2009, attached as Exhibit 32.

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IV. Ruiz Ignored his Staff's Concerns and Offered Hu a Contract that was Excessive and Contrary to OPM Guidance and SEC Practice

In late-July, 2009, Ruiz asked (b)(7)(C) OHR Specialist, to prepare Hu's IPA contract. (b)(7)(C) Testimony Tr. at 8, 28. Initially (b)(7)(C) provided Ruiz with the standard IPA agreement that included the \$9,000 cap on relocation expenses. *Id.* at 16-17; *see also* August 12, 2009 e-mail from (b)(7)(C) to Jeffrey Risinger, attached as Exhibit 33. (b)(7)(C) testified that Ruiz told her to remove that provision.⁹ (b)(7)(C) Testimony Tr. at 24-25. (b)(7)(C) testified that Ruiz explained to her that Hu's duty station was Austin, Texas, not Washington, D.C., and that accordingly he was entitled to get reimbursed for all of his travel expenses while working in Washington, D.C. *Id.* at 28-29.

As discussed above, offering Hu a per diem arrangement, instead of the \$9,000 relocation allowance, was unprecedented at the SEC. It was also contrary to OPM guidance regarding IPA agreements that:

An agency should consider the cost to the Federal Government to be a major factor when determining whether to pay a per diem allowance at the assignment location or limited relocation allowances. An agency should also consider the duration of the assignment. A per diem allowance is meant for shorter assignments.

See Exhibit 2 at 4. The arrangement to pay Hu's living expenses was not short-term as OPM guidance indicates such arrangements should be. The SEC initially arranged to pay those expenses for one year and, as discussed below, renewed the arrangement for a second year. Moreover, the SEC offered to pay Hu's living expenses without considering as a major factor the cost to the Federal Government. The offer did not include a cap on how much the SEC would pay for Hu's living expenses and was made despite the staff's express concerns that the arrangement was too costly. As those costs mounted, no effort was made to renegotiate the arrangement with Hu, even when his IPA agreement was renewed for a second year.

Similarly, defining Hu's assignment location as Austin, Texas, so that he could receive a travel per diem every day that he was in Washington, DC, including weekends, was questionable. On May 12, 2009, (b)(7)(C) had e-mailed Ruiz the following answer to a question Ruiz had posed:

Under what circumstances can the SEC pay for a newly hired employee's lodging?

...

⁹ (b)(7)(C) testified that it was unusual for the Executive Director to be involved in preparing an IPA contract. (b)(7)(C) Testimony Tr. at 46.

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2. Under extended travel with the following assumptions:

Assumptions:

FTE permanent duty station is Regional Office

Frequent or extended travel required from Region to Washington DC Headquarters and temporary or extended lodging is required.

See Exhibit 15 (emphasis added).

OPM defines TDY travel as “duty at a location(s) other than the permanent duty station.” See Part 300-3 Glossary of Terms, attached as Exhibit 34, at 2. A June 20, 2001 report by the General Services Administration (“GSA”) stated:

The OPM Guide for Processing Personnel Actions . . . is considered by OPM as the best reference for understanding duty station and the location of an employee’s work site. For most employees, the work site is the place where the employee “works, or at which the employee’s activities are based, as determined by the employing agency;” i.e., “the location of the employee’s desk or place where the employee normally performs his or her duties. . . .

See Exhibit 12 at 1. The same GSA report distinguished a temporary change in duty station from “a TDY assignment of up to 6 months in which per diem is paid.” *Id.*

On September 9, 2009, Hu’s IPA agreement became effective. See Exhibit 32. That agreement was for a one-year term from September 9, 2009 to August 31, 2010. *Id.* Pursuant to that agreement, the SEC agreed to reimburse the university \$239,287 for a portion of his UT salary and benefits. *Id.* Before the end of Hu’s 2009 IPA contract, he and the SEC agreed to sign another IPA contract extending his tenure by another year.¹⁰ See Exhibit 35. That agreement was for a one-year term from September 1, 2010 to August 31, 2011. *Id.* Pursuant to that agreement, the SEC agreed to reimburse the university \$246,133 for a portion of his UT salary and benefits. On December 6, 2010, Hu notified UT and the SEC that he was terminating the 2010 IPA contract as of January 18, 2011. See December 6, 2010, e-mail from Hu to (b)(7)(C) Financial Affairs, UT School of Law, and copied to Associate Executive Director, Jeff Risinger, OHR, attached as Exhibit 37.

¹⁰ Hu’s second IPA contract was not fully executed until October 13, 2010. See December 20, 2010 memorandum Request for Equitable Relief (Ratification/Quantum Meruit) -- Henry Hu from Risinger attached as Exhibit 36. However, the SEC had executed the contract on August 25, 2010, and Hu continued working for the SEC continuously during the interim and was compensated for that work at the same terms of the 2010 IPA contract. *Id.*

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The OIG found that from September 9, 2009 through January 18, 2011, the SEC reimbursed Hu for over \$120,000 in travel-related expenses, including his lodging and meals on weekends while he was in DC.¹¹ See Exhibit 30. The OIG also found that for most of that period, Hu lived in Washington, DC. *Id.* In fact, during the period of September 2009 through April 30, 2010, Hu flew to Austin on just three occasions. *Id.* Notably, Hu flew back to Austin a total of just 17 times for the period of September 2009 through January 2011 at the SEC's expense of approximately \$12,400.00. *Id.* Hu lived in DC (and was reimbursed by the SEC for his lodging and meals) 399 days of the 496 days that Hu was associated with the SEC with his duty station in Austin, Texas. *Id.*

Conclusion

The OIG found that the SEC's arrangement with Hu was contrary to OPM guidance and SEC practice based on that guidance regarding IPA agreements. The unprecedented arrangement to pay for Hu's living expenses while working in Washington, DC, the actual location of his office, ultimately cost the SEC approximately \$100,000 more than would have been if it had followed OPM guidance and SEC practice.

The OIG found that the SEC's former Executive Director, Diego Ruiz, was the person primarily responsible for the unprecedented offer to pay Hu's living expenses during the term of his IPA agreement with the SEC. Since Ruiz has resigned from the agency, we are not making a disciplinary recommendation as a result of this matter.

However, we do recommend that the Chief Operating Officer develop guidelines regarding IPA agreements that: (1) mandate that duty stations be located where there is an SEC office; (2) defines the circumstances when a per diem arrangement similar to Hu's may be offered; and (3) establishes limits on the duration of per diem travel arrangements.

¹¹ Less than one month after he left the SEC, Hu lamented to the press that the SEC was hindered by a lack of adequate funding for official travel. See Don't Count On the SEC, Barrons, February 5, 2011, attached as Exhibit 38. Barrons reported the following:

According to Henry Hu, until recently the director of the SEC's Division of Risk, Strategy and Financial Innovation, his thin travel budget wouldn't let his Washington, D.C. employees take the train to Wall Street. The budget problems also preclude experts from his division, some of them Ph.D. mathematicians and economists with Wall Street experience, from accompanying less-experienced examiners on visits to hedge funds and other firms that deal with complex financial products.

Id.

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The OIG is providing copies of this report to the Chief Operating Officer, Deputy Chief of Staff, Office of the Chairman, Commissioner Elisse Walter, Commissioner Luis Aguilar, Commissioner Troy Paredes, and the General Counsel.¹²

Submitted: (b)(7)(C) Date: 9/7/11

Concur: (b)(7)(C) Date: 9/7/2011

Approved:  Date: 9/7/11
H. David Kotz

¹² During the course of this investigation, the OIG investigated complaints regarding the amount of travel expenses related to the fact that the Director and Deputy Director of the SEC's Office of Compliance Inspections and Examinations (OCIE), which is headquartered in Washington, DC, live in the New York City area, travel regularly to SEC headquarters, and are reimbursed for that travel. When they were hired for their respective positions, the SEC made the SEC's New York City Regional Office the official duty station for Carlo di Florio, the OCIE Director, and Norman Champ, the OCIE Deputy Director. However, unlike Hu, their official duty station is an SEC regional office and they do work out of that office when they are not working in Washington, DC. The OIG found that di Florio was reimbursed \$45,688.09 for the period of January 25, 2010 through July 11, 2011, and Champ was reimbursed \$13,329.92 for the period of August 24, 2010 through July 11, 2011. See spreadsheet with attached expense reports at Exhibit 39.