



INVESTIGATIVE REPORT

U.S. Department of
Commerce

Review of Alleged Misconduct and
Waste of Government Resources by a
Senior Official

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Chapter I: Introduction

I. Background and Executive Summary

On December 2, 2013, a complainant contacted the Office of Inspector General (OIG) of the United States Department of Commerce (Department) alleging a senior Department official (Senior Official) engaged in a number of acts constituting waste of government resources and/or fraud. The whistleblower specifically alleged that Senior Official (i) misused a government computer that had been issued to her¹ by allowing a family member to access and use the equipment, (ii) engaged in wasteful foreign travel at the expense of the federal government, and (iii) submitted false time and attendance claims. The OIG initiated investigation I4-0153 to determine whether the whistleblower's allegations could be substantiated.

To investigate the whistleblower's allegations, the OIG interviewed 15 employees across multiple programs of the Department, including Senior Official herself. We also conducted forensic analysis on multiple computer devices issued to Senior Official and reviewed time and attendance records, security badge records, e-mail communications, government property records, and travel records.

During the investigation, several additional questions arose regarding the propriety of Senior Official's conduct in response to the OIG's inquiries. First, one of Senior Official's tablet devices collected by the OIG for forensic analysis appeared to have been remotely erased, raising concerns regarding whether Senior Official attempted to interfere with the OIG's investigation. Second, the OIG received allegations that Senior Official engaged in retaliation against one of her subordinates for cooperating as a witness in the OIG's investigation as well as a pending investigation by the Equal Employment Opportunity Office.

The OIG's investigation revealed a troubling pattern of conduct that was abusive of government resources and evidenced a disregard for conservation of such resources, as well as misconduct by Senior Official in response to the OIG's investigation. In particular:

- The evidence revealed that Senior Official misused government computer equipment, including permitting members of her household to access and use such equipment, which resulted in inappropriate use of such equipment to view and/or store pornographic, sexually suggestive, and racially offensive materials. Additionally, the investigation uncovered that, for a period of approximately six months, Senior Official maintained no less than seven government-issued computer resources at her private residence, including two desktop computers, three laptop computers, and at least two iPad tablets, suggesting she was, at a minimum, indifferent to her obligation to conserve government property and resources.

¹ Feminine pronouns are used for all individuals in this report to protect their identity. Additionally, feminine pronouns replace their masculine counterparts in quoted material without notation of the replacement.

- The evidence showed that, in connection with official travel for a Department division, Senior Official selected a flight itinerary that benefitted her personally (by permitting her to seek reimbursement from the government for expenses associated with her own personal, non-official travel plans), despite the fact she was presented with viable alternatives that would have reduced the cost to the government. The evidence indicates that the government overpaid for Senior Official's travel expenses by approximately \$1365.
- A review of Department records revealed numerous discrepancies between the arrival and departure times Senior Official listed in her official time and attendance records and the actual arrival and departure times indicated by Department security badge records. Although these discrepancies did not conclusively establish that Senior Official's time records were false, they call into question the veracity and accuracy of her time and attendance claims. Moreover, other evidence reviewed by the OIG casts further doubt on Senior Official's time and attendance claims. For example, on at least one occasion in July 2014, Senior Official claimed a full eight-hour day of telework when, in fact, the evidence suggests she likely worked for a substantially shorter period of time that day—as little as twenty minutes.

The OIG also uncovered evidence of troubling conduct by Senior Official in response to its investigation. This included evidence that Senior Official failed to comply with a preservation order issued by the OIG, which resulted in impeding the OIG's access to information and materials relevant to its investigation, as well as credible evidence that Senior Official's belief that one of her subordinates cooperated with the OIG's investigation was a significant factor in Senior Official's proposal to take disciplinary action against the subordinate. This evidence is deeply troubling to the OIG as it calls into question Senior Official's compliance with her obligations as a government employee.

At the conclusion of the OIG's investigation, the OIG provided Senior Official an opportunity to review and provide comments on a draft of this report's statements of facts. After receiving and reviewing the draft statements of facts, Senior Official's attorney informed the OIG by letter that Senior Official was advised not to "speak further on the substance of the[] allegations at this time, but to address them with [Department] management as appropriate." In her letter, Senior Official's attorney also informed the OIG that, without admitting any wrongdoing, Senior Official did acknowledge a "substantial difference" between the prices of the two travel plans for Senior Official's foreign travel. Senior Official's attorney maintained that Senior Official was unaware of these "significant differences" in price, had relied upon Department personnel with respect to planning her travel, and "[did] not agree that the travel funds were spent inappropriately;" nonetheless, the letter stated Senior Official was agreeable to repay the difference between the two travel plans.

In light of the findings contained in this report, the OIG makes the following recommendations:

- I. The Department should consider taking appropriate administrative action with respect to Senior Official in light of the conduct discussed in this report.

2. The office that issued government-owned computer devices to Senior Official should evaluate and make appropriate changes to its policies concerning requests for government-owned equipment to be used at home, as well as evaluate its personal property record-keeping to ensure it complies with Department policies and procedures.
3. The division that sponsored Senior Official's international travel should evaluate and make appropriate changes to its policies and practices concerning its organization of conferences to ensure they sufficiently protect against any appearance of impropriety that may arise with respect to expenditure of government funds to support such conferences. Additionally, this division should provide training regarding the Federal Travel Regulation (FTR) and Department travel policies to all staff responsible for arranging, requesting, and approving travel requests in connection with its programs, as well as ensure that all Department employees traveling in connection with its programs receive similar training.
4. The Department should consider issuing formal guidance regarding a traveler's ability to receive per diem and reimbursement for expenses associated with a rest stop of up to 24 hours under the FTR and Department travel policies when the traveler elects to take personal leave at a layover location while en route to or from a temporary duty location.

II. Organization of the Report

This report analyzes each of the following five issues arising from the OIG's investigation into the December 2, 2013 complaint against Senior Official:

- Alleged Misuse of Government Property
- Alleged Wasteful International Travel
- Alleged False Time and Attendance Claims
- Potential Failure to Comply with OIG Preservation Order
- Alleged Retaliation Against Cooperating Witness

Chapter 2 of this report sets forth, with respect to each issue, the relevant facts uncovered by the OIG's investigation and the OIG's findings regarding whether Senior Official's conduct comported with applicable statutory and regulatory provisions. Chapter 3 then sets forth the OIG's recommendations.

Chapter 2: OIG Analysis of Alleged Misconduct

I. Alleged Misuse of Government Property

The whistleblower complaint alleged that Senior Official misused government property by allowing a member of her household to access and use a government-owned computer she had been issued. To investigate the whistleblower's allegations, the OIG reviewed two of Senior Official's government-owned computers, Department property records, and e-mail records, as well as interviewed relevant witnesses, including Senior Official and personnel with responsibilities for management of the government equipment used by Senior Official.

The OIG's investigation substantiated the whistleblower's allegations that Senior Official permitted members of her household to access and use government-owned desktop computers for unofficial purposes in contravention of federal regulations and Department policy. Additionally, a forensic review of two of these computers revealed that inappropriate materials—including pornographic, sexually suggestive, and racially offensive materials—were either saved on or accessed through the government-owned equipment maintained at Senior Official's residence.

In addition to this misuse of government property, the OIG investigation also uncovered that, at one particular point in time, Senior Official accumulated at least seven government-owned information technology (IT) resources for use outside of the office. Although the Department makes available to certain personnel a variety of devices to facilitate remote connectivity, the OIG finds that Senior Official's accumulation of these devices was excessive and likely resulted in waste of government resources that could have been otherwise deployed, which constituted an abuse of this privilege.

A. Federal Regulations and Department Policies Concerning Government-Owned Personal Property

I. Standards of Ethical Conduct for Employees of the Executive Branch

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. pt. 2635, recognize that “[p]ublic service is a public trust” and that each officer or employee of a federal agency “has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.”² To ensure public confidence in the integrity of the federal government, the Standards of Ethical Conduct set forth both general ethical principles to which government employees are required to adhere, as well as regulations governing employee conduct in certain specified circumstances.

Section 101(b)(9) of the Standards of Ethical Conduct sets forth the general ethical requirement that “[e]mployees shall protect and conserve Federal property and shall not use it for other

² 5 C.F.R. § 2635.101(a).

than authorized activities.”³ Section 704 reiterates this duty to “protect and conserve Government property” and prohibits employees from “us[ing] such property, or allow[ing] its use, for other than authorized purposes.”⁴ “Government property” is defined broadly under Section 704 as “any form of real or personal property in which the government has an ownership, leasehold, or other property interest,” including “telephone and other telecommunications equipment and services.”⁵ Additionally, Section 704 defines “authorized purposes” for which government property may be used as “those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.”⁶

2. Department Policies Concerning Use of Government Property

The Department has issued a Department Personal Property Management Manual setting forth department-wide policies and procedures concerning Department-owned personal property.⁷ The Property Manual makes clear that “[n]o employee of the Department shall use or authorize the use of Government property for other than official purposes.”⁸ Moreover, the Property Manual establishes that “[e]ach employee of the Department who uses, supervises the use of, or has control over Government property, is responsible for that property,” including “[e]nsuring that personal property in [an employee’s] possession, custody, or control is used only for Government purposes, and not for personal or private use.”⁹

In addition to the restrictions upon use of government property contained within the Property Manual, all use of Department IT resources by customers of the [REDACTED] must comply with the [REDACTED].¹⁰ The [REDACTED] require, among other things, that users of Department IT resources (i) acknowledge that Department resources “are for authorized Government use only,” (ii) refrain from installing “unauthorized software” on such resources, and (iii) agree to make no further attempt to access IT resources when no longer required.¹¹

Finally, the Department Internet Use Policy explicitly forbids use of “Department Internet services . . . during the working or non-working hours” for “[u]nauthorized creation, down-

³ 5 C.F.R. § 2635.101(b)(9).

⁴ 5 C.F.R. § 2635.704(a).

⁵ 5 C.F.R. § 2635.704(b)(1).

⁶ 5 C.F.R. § 2635.704(b)(2).

⁷ U.S. DEP’T OF COMMERCE, DEPARTMENT PERSONAL PROPERTY MANAGEMENT MANUAL (2007) (PROPERTY MANUAL). Pursuant to DAO 200-0, the Property Manual has the full force and effect of a Department Administrative Order.

⁸ PROPERTY MANUAL § 1.201(b).

⁹ *Id.* § 1.206.

¹⁰ See [https://\[REDACTED\]](https://[REDACTED]) (last visited July 10, 2015).

¹¹ [REDACTED] [https://\[REDACTED\].pdf](https://[REDACTED].pdf) (last visited July 10, 2015).

loading, viewing, storage, copying, or transmission of sexually explicit or sexually oriented material.”¹²

3. *Department Policies Concerning Personal Property Management*

In addition to prescribing the permissible uses of government-owned personal property, the Property Manual also sets forth “policy for an effective and efficient management program regarding the accountability of [the Department’s] personal property,” which is intended “to prevent loss, waste, theft, misuse, or unwarranted accumulation of property.”¹³ Chapter 3.805 of the Property Manual describes the process whereby the Department maintains records constituting a chain of custody, which is intended to “illustrate the location of accountable property and the individuals responsible for its care and safekeeping.”¹⁴ Pursuant to these controls, a Property Custodian is required to document the provision of equipment to an end user by physically signing down such property to the user.¹⁵

B. Statement of Facts

1. *Senior Official Accumulated Multiple Government-Owned IT Assets at Her Private Residence*

At all times relevant to the OIG investigation, Senior Official was the head of an office that provides administrative services for an entire division of an operating unit within the Department. According to Senior Official, her administrative management functions included responsibilities with respect to “financial management, human resources, information technology, property, [and] space.” She also stated that she acted as the authorizing official for the various offices within her operating division, which required her to “review their task orders, their procurement requests, their travel, [and] their [Human Resources] actions.” As head of her office, Senior Official had supervisory responsibilities for multiple federal employees.

The OIG’s investigation revealed that Senior Official accumulated multiple government-owned desktop, laptop, and tablet resources that were maintained and used at her private residence. Indeed, during the approximately 14-month period between February 2013 and April 2014, Senior Official possessed at least one government-owned desktop computer, laptop computer, and tablet computer at all times. Moreover, for the six-month period from October 2013 through March 2014, Senior Official had no less than seven different government-owned desktop, laptop, and tablet resources, all kept at her private residence.¹⁶ These home-use computer resources were in addition to a Blackberry device that was also issued to Senior Official.

¹² OFFICE OF THE CHIEF INFO. OFFICER, U.S. DEP’T OF COMMERCE, INTERNET USE POLICY, http://ocio.os.doc.gov/ITPolicyandPrograms/Policy___Standards/Dev01_002685 (last visited July 10, 2015).

¹³ PROPERTY MANUAL § 1.002.

¹⁴ *Id.* § 3.805.

¹⁵ *Id.*

¹⁶ These computer resources were in addition to the equipment issued to and used by Senior Official within her office at the Department.

Figure I illustrates the computer resources the OIG determined were located at Senior Official's private residence during the 2013 and 2014 calendar years:

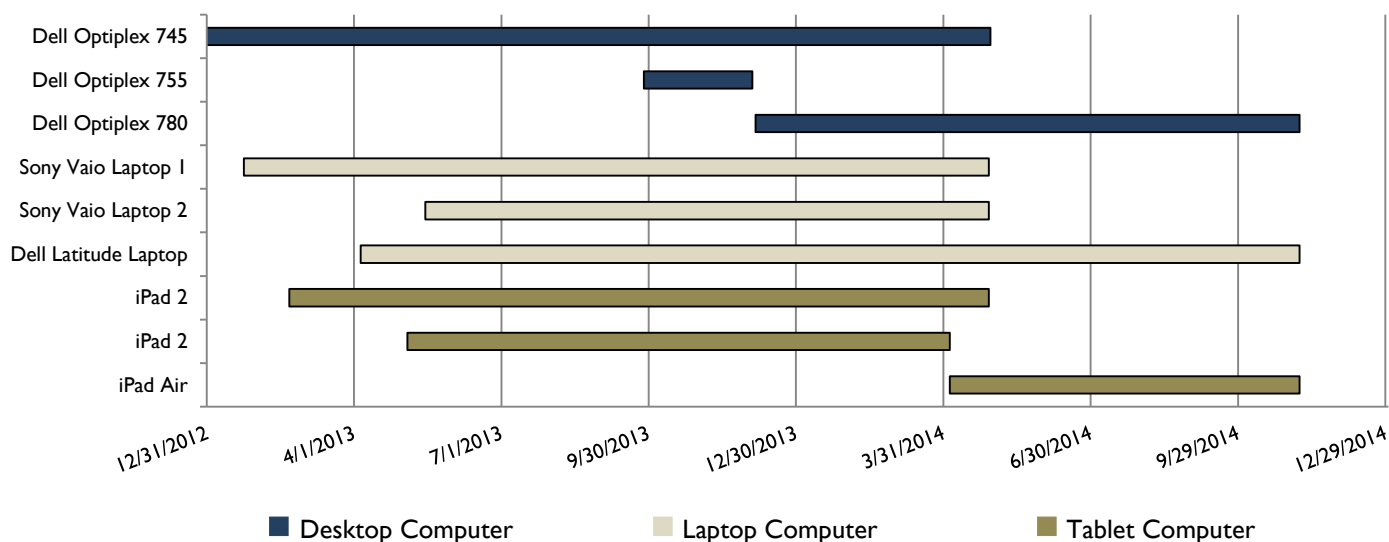


Figure I: Timeline of Senior Official's Home Use of Government-Owned Desktop, Laptop, and Tablet Resources¹⁷

When questioned by the OIG, Senior Official stated that, within her office, any individual can receive a new piece of IT equipment simply by requesting such equipment from the individuals responsible for management of government property, provided there is a “good reason” for the request. Senior Official acknowledged that all of the individuals responsible for issuing such equipment are her subordinates. Moreover, Senior Official told the OIG that she did not need to seek approval from her supervisor when requesting that a new device be issued to her.

Senior Official stated that she would request equipment only “if [her] equipment is not functional or there’s a problem with it.” Consistent with this, Senior Official told the OIG that she received a second iPad tablet only after the screen of her first iPad cracked, that she requested a third iPad after she lost the second iPad, and that she received a second Sony laptop computer after a key had fallen off of the first laptop.

Nevertheless, Senior Official was unable to provide a reasonable explanation for why she consistently neglected to return previously issued equipment when receiving a replacement device. For example, despite having brought home newer-model, government-owned desktop computers, Senior Official retained the government-owned Dell OptiPlex 745 desktop computer for a period of approximately seven months. When asked why she had not returned the older desktop computer at the time she received a newer-model computer, Senior Official responded that she simply “didn’t make the time to turn [the older computer] in timely.” Senior Official similarly provided no explanation for why she retained the government-issued

¹⁷ Appendix A to this report provides further detail regarding the OIG’s determination of the dates corresponding to Senior Official’s possession of these government-owned resources.

iPad with a cracked screen at her home after receiving a replacement tablet, noting, “I just let it pile up.” She made similar statements regarding her failure to return older laptop computers.

Additionally, as detailed below, the evidence indicates that many of the devices for which Senior Official received replacements continued to function and appear to have remained in use even after Senior Official brought home equipment to replace them:

- Forensic analysis performed on the Dell OptiPlex 745 desktop computer revealed that a member of Senior Official’s household signed onto the computer as late as March 26, 2014, nearly seven months after Senior Official brought home a newer-model computer.¹⁸
- Senior Official stated that, even after a key fell off of the first Sony VAIO laptop she received, “it still worked,” and she utilized the laptop for continuity of operations purposes, despite the fact she had been issued a different Dell laptop specifically for such purposes and possessed another functioning Sony VAIO laptop as well.
- Senior Official told the OIG that the iPad with a cracked screen was “still functional” and that she utilized this device for “almost a year” after the screen cracked. The evidence therefore suggests that Senior Official utilized both the iPad with a cracked screen and the replacement iPad at the same time for a period of approximately nine months.¹⁹

2. *Certain Government-Issued Devices That Senior Official Took Home Were Used for Non-Government Purposes*

The OIG’s investigation revealed that the desktop and tablet IT resources Senior Official took home with her were used for non-Department related activity. Such use included not only “personal use” by Senior Official herself,²⁰ but also use by members of Senior Official’s household.²¹ Indeed, the evidence suggests that from at least April through November 2014—a

¹⁸ When interviewed by the OIG, Senior Official insisted that once she received a newer desktop computer, the older-model OptiPlex 745 was not plugged in or connected to the Internet and simply “sat in [her] house – unused.” The OIG does not find these statements credible in light of its forensic analysis of the relevant hard drive indicating multiple uses after her receipt of the newer desktop.

¹⁹ Both Senior Official and another employee with responsibility for managing government property in Senior Official’s office stated that Senior Official utilized the second government-issued iPad for approximately one year prior to its reported loss in April 2014. This places the date on which Senior Official began using the second iPad in approximately May 2013. If one were to assume Senior Official’s first iPad cracked on the first day it was issued to her, her testimony indicates that she nonetheless continued to utilize the iPad until at least February 2014. Therefore, the evidence indicates that Senior Official utilized both the cracked iPad and the replacement iPad during the approximately nine-month period of time between May 2013 and February 2014.

²⁰ For example, Senior Official stated that she set up her own personal e-mail and downloaded “a lot of apps”—such as Netflix, Facebook, Twitter, and GoodNotes—“for managing [her] busy life” on her iPad devices.

²¹ Senior Official stated that “there might have been an occasion or two where [members of her household] did access” her government-owned iPad devices or instances where she “turned it on for them and let them use it for whatever reason.” Describing her household members’ use of the government-owned tablet and laptop devices, Senior Official explained, “[T]he iPads and the Sony laptops, um, I was a little bit more restrictive over, but I’m not saying they’ve never accessed it.”

period during which Senior Official stated she did not own a personal desktop computer²²— Senior Official’s household treated her government-issued desktop computers as household property. For example, Senior Official told the OIG that one member of her household used the government-owned desktop computers for personal, non-government purposes approximately 20 hours per week. In fact, Senior Official admitted that she permitted this household member to set up a user profile on at least one of the government-owned desktop computers, which facilitated the household member’s use of the government-owned equipment. Moreover, a forensic analysis of two of Senior Official’s government-owned desktop computers²³ showed that each computer contained at least four user profiles, including profiles associated with multiple members of Senior Official’s household.²⁴ The analysis also found the following evidence of unofficial use on these computers: multiple non-Department related documents created by members of Senior Official’s household, thousands of personal photographs and videos, software for computer gaming and telecommunications, as well as evidence of other inappropriate use by Senior Official’s household members discussed in Section II.B.3 below.

Senior Official told the OIG that her division follows the Department policies regarding personal use of IT devices, which she stated she understands permits “limited personal use” of such devices. She further explained her understanding of Department policy as follows: “Outside of a work capacity, which is outside of telework time, or other time that I’m working . . . there’s no policy specific to personal use outside of government time.” When the OIG asked her to elaborate, Senior Official stated:

Well the policy that I’m aware of, and as I understand it, it talks about government issued equipment and how to use it when you’re within a telework or work capacity.

. . .

But it doesn’t specifically say, “You cannot use it outside of” – or at least my understanding of it.

²² Although she stated she did not own a personal desktop computer, Senior Official told the OIG that one member of her household had a personal MacBook beginning in approximately Christmas 2013.

²³ The OIG did not forensically analyze the OptiPlex 755 desktop computer issued to Senior Official as it was reported as “Transferred to Other Government Agency” before being identified as relevant to the OIG investigation.

²⁴ The forensic analysis also revealed that one of the profiles located on the government-owned OptiPlex 780 was associated with the prior Department of Commerce user of the computer, indicating the desktop had not been appropriately scrubbed before being issued to Senior Official. When asked about her household members’ use of government-owned computer resources, Senior Official told the OIG that she was aware of only one member of her household with a profile on the government-owned desktop computers located in her home. The OIG finds this statement lacks credibility as Senior Official would have seen user profiles for other household members when she herself utilized these computer resources. Moreover, in light of the extensive evidence of use identified by the OIG’s forensic analysis, this statement indicates that, at the very least, Senior Official was not exercising reasonable supervision over the use of these computer resources in her home.

3. A Forensic Review Revealed Inappropriate Content on Senior Official's Government-Owned Desktop Devices

As discussed above, the OIG's forensic analysis of the OptiPlex 745 and OptiPlex 780 revealed that both desktop computers contained materials that were not related to Department activities. Among the non-Department-related materials found during the OIG's forensic analysis were inappropriate materials of a pornographic, sexually suggestive, and racially offensive nature. The inappropriate materials discovered during the OIG's forensic review are described in the table below:

Content Description	
Dell OptiPlex 780	
Profile I	<ul style="list-style-type: none"> Sexually suggestive pictures depicting a female in a bathing suit and what appears to be lingerie and underwear²⁵
Profile II	<ul style="list-style-type: none"> Pornographic pictures depicting topless females as well as male and female genitalia²⁶ Videos of females dancing with one another in a sexually suggestive manner
Dell OptiPlex 745	
Profile I	<ul style="list-style-type: none"> Sexually suggestive pictures of a female posing in underwear and making mildly obscene gestures²⁷ Inappropriate text messages²⁸ Racially offensive image²⁹
Profile II	<ul style="list-style-type: none"> Browser history indicating user accessed multiple pornographic websites
Profile III	<ul style="list-style-type: none"> Browser history indicating user accessed at least one pornographic website

Table 1

Senior Official told the OIG that she did not supervise members of her household when they utilized the government-owned desktop computer at Senior Official's home and noted that she knew only that the computers were being used. When asked if she thought it was appropriate to access a pornographic website from a government-owned computer, Senior Official stated

²⁵ The pathline for these photographs indicates that the pictures were taken on a Samsung phone and downloaded to the government-owned computer.

²⁶ The pathline for these photographs indicates that the images were downloaded to the government-owned computer from an iOS device such as an iPhone or iPad.

²⁷ The pathline for these photographs indicates that the images were downloaded to the government-owned computer when an Apple device was backed up onto the computer.

²⁸ See note 27, *supra*.

²⁹ See note 27, *supra*.

ALL WITHHOLDINGS PURSUANT TO EXEMPTIONS (B)(6) & (B)(7)(C)

that accessing such a site would be inappropriate either during work time or when it poses a security risk, but that otherwise she “would not feel like [she was] doing anything inappropriate based on what [she] know[s] about the policy is for – government equipment and the use – and the use of it.”³⁰

4. Senior Official Was Not Always Listed as the End User of Equipment Provided to Her for Home Use

The OIG’s investigation revealed inconsistencies in the manner in which property records noted Senior Official as the end user of the computer equipment subject to the OIG’s review. For many of the assets listed in Figure I above, Senior Official was listed as the “Current User” within the Sunflower Property Management System (Sunflower)—the system utilized by the Department for tracking Department-owned personal property. However, for the following property assets, Senior Official did not appear in the “Current User” field and could be associated with the relevant asset only by reviewing other Department records:

Barcode #	Description	Manufacturer	Model Number	Association with Senior Official in Sunflower	Other Record(s) Associating Asset with Senior Official
[REDACTED]	COMPUTER, LAPTOP, TABLET	APPLE	IPAD 2 A1395	N/A	E-mail to DOC-CIRT reporting Senior Official’s loss of government-owned equipment Form CD-52 listing Senior Official as property “User”
[REDACTED]	COMPUTER, DESKTOP	DELL	OPTIPLEX 755	N/A	9/27/13 Property Pass issued to Senior Official
[REDACTED]	COMPUTER, LAPTOP	DELL	LATITUDE E6330	“Location” listed as “[Senior Official’s] House”	N/A

Table 2

³⁰ See Senior Official Tr. at 5498-508 (“Q. Do you think we’re going to find any photographs . . . that may be deemed inappropriate? A. That’s likely. Q. Why did you think this was okay on a government computer? A. Because I thought the risk that we are – um, so the policy as I understood it was twofold: you cannot use government time, work time, to do – you can only do a limited amount of personal use during work time, and that you have to adhere to um, security risk or threats to the government network.”).

C. Findings and Conclusions

I. Senior Official's Use of Government-Owned IT Resources Violated Federal Regulations and Department Policies

a. Senior Official and Members of Senior Official's Household Used Government-Owned IT Resources for Unauthorized Purposes

The evidence establishes that Senior Official violated the regulatory and Department prohibitions against use of government property for other than authorized purposes when she utilized government-issued IT resources for personal and private use, which included permitting multiple members of her household to use these resources for non-Department related activities.³¹ Contrary to Senior Official's understanding, the Department's Property Manual does not contain a "limited personal use" exception and does not permit private or personal use of government-owned property even when such use occurs outside of working hours.³² However, even if one were to find that the Department's policies should be read to incorporate a "limited personal use" or "de minimis use" exception,³³ the evidence shows that the personal use of the government-owned equipment at issue in this case comprised more than 20 hours per week—averaging approximately three hours per day—as well as storing of thousands of personal pictures and videos, which is far from "limited." Additionally, even if a limited personal use exception were read into the Department policy, it is not clear that such an exception would apply to personal use by individuals other than Senior Official herself.³⁴

Moreover, the inappropriate nature of the computer use at issue in this case—accessing, viewing, and/or storing of pornographic, sexually suggestive, and racially insensitive materials by Senior Official and members of her household—itself violated Department policies and cannot be justified under any exception permitting limited personal use of government-owned IT resources.³⁵ Indeed, the Merit Systems Protection Board has explicitly recognized that such conduct violates the federal Standards of Ethical Conduct:

³¹ See 5 C.F.R. §§ 2635.101(b)(9), 2635.704; PROPERTY MANUAL §§ 1.201(b), 1.206.

³² See PROPERTY MANUAL §§ 1.201(b), 1.206. Senior Official's confusion regarding whether "limited personal use" is permitted likely stems from the inclusion of "limited personal use" exceptions in the Telecommunications Management Policy and Internet Use Policy issued by the Office of the Chief Information Officer of the Department of Commerce. These policies, however, do not apply on their face to use of government-owned equipment such as computers, which are governed by the Property Manual.

³³ See note 32, *supra*; see also *O'Neill v. Department of Hous. & Urban Dev.*, 220 F.3d 1354, 1364 (Fed. Cir. 2000) (noting that the "argument that the regulation concerning misuse of government property . . . must be read to have an implicit de minimis exception has some force" but deciding case on other grounds).

³⁴ See OFFICE OF THE CHIEF INFO. OFFICER, U.S. DEP'T OF COMMERCE, INTERNET USE POLICY, http://ocio.os.doc.gov/ITPolicyandPrograms/Policy__Standards/DEV01_002685 (last visited July 10, 2015) (INTERNET USE POLICY) ("This policy provides general guidance regarding Internet use by Department of Commerce personnel who are authorized to use Commerce resources . . ." (emphasis added)); OFFICE OF THE CHIEF INFO. OFFICER, U.S. DEP'T OF COMMERCE, TELECOMMUNICATIONS MANAGEMENT POLICY, http://ocio.os.doc.gov/ITPolicyandPrograms/Policy__Standards/dev01_003640 (last visited July 10, 2015) ("Employees are authorized to use [telecommunication] services for personal use subject to the constraints discussed in specific criteria below." (emphasis added)).

³⁵ See INTERNET USE POLICY.

I find that . . . the appellant allowed her sons to download a very substantial amount of inappropriate materials consisting of computer games, and still images of people appearing to be engaged in various sexual activities, including oral sex, copulation, masturbation, and group sex. . . . I credit the appellant's testimony that she did not personally download these materials; however, I find that she allowed her sons to access her government issued computer 'for other than authorized purposes,' in violation of 5 C.F.R. § 2635.704(a) which prohibits unauthorized use.³⁶

Finally, the OIG is troubled by Senior Official's statement that she would "not feel like [she was] doing anything inappropriate" if she accessed a pornographic website on a government-owned computer so long as the access did not occur during work hours or while connected to a government network. Given her position as a manager within an office responsible for providing administrative management functions to an entire division within her operating unit, Senior Official should understand that such use of government property is unquestionably inappropriate regardless of when and how it occurs.

b. Senior Official Failed to Conserve Government Property When She Accumulated Multiple IT Resources and Failed to Timely Return Those That Had Been Replaced

In addition to violating the Standards of Ethical Conduct by using government resources for unauthorized and inappropriate purposes, Senior Official violated these same federal regulations by failing to "protect and conserve Government property."³⁷ By maintaining multiple pieces of the same type of equipment, maintaining multiple types of equipment to be used for the same purpose, and failing to return redundant equipment in a timely fashion, Senior Official deprived the Department of the ability to put these resources to other uses. The mismanagement of these government resources was not only an inefficient use of these resources but also may have resulted in waste at the expense of taxpayers.

2. Record-Keeping for Property Assigned to Senior Official Did Not Comply with Department Policy

As discussed above, Senior Official was not correctly identified as the end user for all of the government-owned IT resources she possessed. The failure to keep appropriately detailed property records violated the requirement contained in Section 3.805 of the Property Manual that a clear chain of custody extending down to the end user be established for each piece of government-owned equipment.³⁸

³⁶ *Nall v. Dep't of Agric.*, 2005 MSPB LEXIS 6115, at *13-15 (M.S.P.B. Sept. 22, 2005); see *Chauvet v. Dep't of Hous. & Urban Dev.*, 2013 MSPB LEXIS 4573, at *73-74 (M.S.P.B. Aug. 30, 2013) ("[Appellant] misused his HUD-issued computer, to view, access, and/or download sexually oriented material . . . in violation of the HUD Limited Personal Use policy, [and] I further find the agency has proven that he violated the ethical standards at 5 C.F.R §§ 2635.101(b)(9) and .704.").

³⁷ 5 C.F.R. §§ 2635.101(b)(9), 2635.704.

³⁸ PROPERTY MANUAL § 3.805; see CFO & ASS'T SEC. FOR ADMIN., OFFICE OF ADMIN. SEVRS., DEP'T OF COMMERCE, PROPERTY BULLETIN # 003, FY10 (2009) ("The purpose of this property bulletin is to formally acknowledge that the

II. Alleged Wasteful International Travel

The initial whistleblower complaint alleged that Senior Official engaged in fraudulent and/or wasteful travel when Senior Official traveled internationally to give a brief presentation at a conference hosted by another division within the Department. The whistleblower alleged that Senior Official lacked expertise in the particular subject area on which she provided a presentation and questioned the necessity of Senior Official's participation in the conference—including the resultant expenditure of federal funds for international travel and accommodations for a five- to seven-day time period—where Senior Official's participation was limited to leading a 22-minute presentation on a subject matter in which Senior Official allegedly lacked expertise. Moreover, the whistleblower raised concerns regarding statements Senior Official allegedly made prior to the conference, in which Senior Official indicated that her primary motivation for her government travel was to go shopping.

To investigate the whistleblower's allegations, the OIG reviewed travel documentation for Senior Official's international trip, materials from the conference, and e-mail correspondence. The OIG also interviewed relevant witnesses, including Senior Official and personnel of the division that sponsored Senior Official's travel. The evidence reviewed by the OIG did not establish that Senior Official's inclusion as a speaker in the conference was improper. However, the OIG determined that the evidence shows the government overpaid for approximately \$1365 of expenses associated with Senior Official's travel and accommodations that resulted from Senior Official's combination of personal leave with her official travel. Additionally, Senior Official demonstrated a lack of judgment when she selected travel arrangements permitting her to seek reimbursement for personal travel unrelated to her official government business, despite the fact she was presented with viable alternative travel arrangements that would lessen the expenses borne by the government. Senior Official's lack of sensitivity to government cost is troubling given her responsibilities both as an authorizing official for travel expense requests and an approving official for travel reimbursement requests.

A. *The Federal Travel Regulation (FTR) and Department Travel Policies and Procedures*

The FTR, 41 C.F.R. § 300-1.1, *et seq.*, regulates federal civilian employee travel performed at the government's expense. In addition, the Department has issued a Department Travel Handbook, which implements the requirements of the FTR and sets forth department policies and procedures for the management of travel by Department personnel.³⁹

Pursuant to the FTR, an agency “may pay only those expenses essential to the transaction of official business” and may not pay for “excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official

end-user field within the Sunflower PPMS is mandatory. . . . Upon creation of a new asset record in the Sunflower PPMS, the designated Property Custodian must enter the appropriate end-user name in the ‘User’ field.”)

³⁹ See U.S. DEP'T OF COMMERCE, DEPARTMENT TRAVEL HANDBOOK 2 (2008) (TRAVEL HANDBOOK); Department Administrative Order 200-0: Department of Commerce Handbooks and Manuals.

business.”⁴⁰ Consistent with this requirement, Department policy requires that “[t]ravel must be conducted in the most effective and efficient manner possible and only when necessary to accomplish the mission of the Government.”⁴¹ In addition, both the FTR and Department policy require that an employee “exercise the same care . . . that a prudent person would exercise if traveling on personal business” when incurring travel expenses.⁴²

To the extent a traveler incurs expenses over certain limits established by the FTR, she is entitled to receive reimbursement only up to the amount of the established limits.⁴³

1. Combining Personal and Official Travel

Both the FTR and Department travel policies and procedures permit a traveler to combine personal travel with official business travel.⁴⁴ When, however, a traveler interrupts travel by a direct route for their personal convenience, the FTR limits reimbursement of the employee to “the cost of travel by a direct route or on an uninterrupted basis” and explicitly states that “[traveler] will be responsible for any additional costs.”⁴⁵ Additionally, the Department Travel Handbook states:

If the employee elects to combine personal travel with official travel, please inform the travel management services (TMS) provider travel agent about the official trip first. TMSs are required, by contract, to issue a ticket charged to the Government that reflects only the travel authorized on the order. The official ticket . . . must use Government fares. Once the official itinerary is established, a ticket will be issued and charged to the centrally-billed account. The personal travel may be added by exchanging the official ticket in accordance with the applicable official travel and airline rules.⁴⁶

2. The 14-Hour Rule: Authorization of Per Diem Expenses Associated with a 24-Hour “Rest Period”

Section 300-11.20(a) of the FTR provides that agencies may authorize a traveler to take a rest period not in excess of 24 hours at either an intermediate point or at the location of the traveler’s destination when: (1) a traveler’s origin or destination point is outside the continental United States; (2) the scheduled flight time, including stopovers, exceeds 14 hours; (3) travel is by a direct or usually traveled route; and (4) travel is by coach-class service (the 14-Hour

⁴⁰ 41 C.F.R. §§ 301-2.2, 301-2.4

⁴¹ TRAVEL HANDBOOK C300.

⁴² 41 C.F.R. § 301-2.3; TRAVEL HANDBOOK C300.

⁴³ 41 C.F.R. § 301-2.4; see, e.g., TRAVEL HANDBOOK C301-10.111 (“If the traveler does not use a city-pair contract airline, and one is available, the reimbursement will be limited to the price of the ticket as offered by the city-pair airline carrier.”).

⁴⁴ See 41 C.F.R. § 301-10.8; TRAVEL HANDBOOK C301-84.

⁴⁵ 41 C.F.R. § 301-10.8.

⁴⁶ TRAVEL HANDBOOK C301-84.2.

Rule).⁴⁷ When a rest period is authorized, a traveler is eligible to receive reimbursement for per diem expenses associated with the rest period.⁴⁸

B. Statement of Facts

1. Senior Official's Responsibilities for Authorizing and Approving Travel Expenses

Senior Official told the OIG that her office is responsible for reviewing and approving travel orders and vouchers for all offices within her division of an operating unit within the Department. With respect to these responsibilities, Senior Official explained that she ensured “that things are consistent with the FTR” and that travel accorded with Department travel policies. During our interview with Senior Official, the OIG inquired specifically into her understanding of the operation of the 14-Hour Rule. Senior Official stated that, when a traveler is presented with two flight itineraries, one with a total travel time less than 14 hours and one with a total travel time greater than 14 hours, the traveler would not be entitled to the benefit of the 14-Hour Rule, even if the longer flight schedule was selected.

2. Senior Official Is Invited to Participate in an International Conference

According to Senior Official and multiple witnesses familiar with the circumstances, the director of a division of the Department (Division Director) that was sponsoring an international conference outside of the United States invited Senior Official to participate in the conference as a speaker. The Division Director told the OIG that she identified Senior Official as a potential conference participant based upon Senior Official's prior experience handling matters for the Department within the subject area of the conference. Numerous other witnesses within the division sponsoring the conference (Sponsoring Division) also told the OIG that Senior Official was selected as a conference participant based upon her relevant work experience within the Department.

A review of Senior Official's e-mail, however, indicates that it was an operations manager in the Sponsoring Division—a division whose travel requests and reimbursements were approved and authorized by Senior Official—that first raised the idea of Senior Official's participation in the conference. In an e-mail to personnel within the Sponsoring Division, the operations manager noted that Division Director and Senior Official had previously discussed the potential for Senior Official to travel in connection with one of the division's programs and wrote, “I was looking at the details of the . . . workshop to take place . . . in early May and was thinking it may be an opportunity for [Senior Official] to travel for [the division].” After sending this email to personnel within the Sponsoring Division, the operations manager forwarded her e-mail to Senior Official, writing, “Question asked. [Division Director] will be back on Monday so if she initially balks at the idea I will try to subtly [sic] push it.” A manager within the Sponsoring Division (Division Manager) responded to the operations manager's e-mail the next day writing that she thought “[t]his is a good idea” because staff from the division “could take time to be with [Senior Official] and shepherd her through the event.”

⁴⁷ 41 C.F.R. § 301-11.20(a).

⁴⁸ See *id.* § 301-11.20(b).

Approximately one week later, Senior Official checked in with the operations manager to determine whether there had been any further developments regarding her potential participation in the conference. The operations manager replied:

[Division Manager] is in [a foreign country] now and she and [Division Director] will discuss how she can incorporate you into the agenda. Maybe as a moderator or have a few specific questions/areas for the group. Let's give it until mid-week next week but I think the likelihood is high that you will go if [counsel] agrees.

Four days later, the Division Director e-mailed the Division Manager, writing that “[Senior Official] would very much like to travel for this program.” She requested that the Division Manager “provide . . . a short write-up on what we would like her to do to add to this program” suggesting that Senior Official also moderate a panel. The Division Manager replied to the Division Director that she “checked on this before [she] left and [there is] room for [Senior Official].” She also wrote that her office would “provide a write up and a role for [Senior Official] to play shortly.”

Multiple witnesses told the OIG that the decision to invite Senior Official was influenced, in part, by the Sponsoring Division's general desire to include front office employees, such as Senior Official, in conferences to familiarize them with the division's work.

3. Senior Official Arranges to Combine Personal Leave with Her Official Travel

Prior to the conference, a program specialist who was responsible for coordinating travel arrangements for conference participants (Program Specialist) e-mailed Senior Official regarding travel to and from the conference location. In her e-mail, Program Specialist provided Senior Official with what Program Specialist described as the “normal” flight schedules between Washington, DC and the conference location. The “normal” flight schedule listed in Program Specialist's e-mail for the leg of the trip from Washington, DC to the conference location constituted a total travel time of 12 hours and 10 minutes from departure to arrival, including a layover in Paris of just over 90 minutes. In her e-mail, Program Specialist explained that the “‘normal’ flight schedule” was “the shortest schedule for a full flight Washington-[the conference location]” and would be “use[d] for the leg of the flight that is without a rest stop.” As suggested by her e-mail, Program Specialist told the OIG that she and Senior Official discussed including a rest stop in Senior Official's itinerary prior to discussing specific travel arrangements.⁴⁹

⁴⁹ In response to questioning by the OIG regarding approval of Senior Official's rest stop en route to the conference location, Program Specialist explained that the international conference was originally scheduled to be held in a different location. She recalled that she and Senior Official had discussed scheduling a rest stop for Senior Official prior to the location change of the conference, noting that travel itineraries between Washington, DC and the original conference site were longer than 14 hours and therefore permitted authorization of a rest stop en route. Based on Program Specialist's e-mail to Senior Official, however, it appears that, despite the change in location of the conference (and resultant changes to available travel itineraries), the parties continued to contemplate that Senior Official would be provided a rest stop during at least one leg of her international trip.

The next day, Senior Official replied to Program Specialist, writing that she intended to “combine personal time in conjunction with this trip and utilize the Paris connection to do so.”⁵⁰ Additionally, despite the fact the “normal” flight time from Washington, DC to the conference location listed in Program Specialist’s e-mail spanned only 12 hours and 10 minutes, Senior Official asked Program Specialist to “confirm that the departure flight time exceeds 14 hours.” Senior Official’s e-mail also further confirmed her intent to take a rest stop en route to the conference location when she wrote to Program Specialist, “If the flight time exceeds 14 hours, I would like to take a rest stop in Paris on the return as well.”

Program Specialist replied via e-mail to Senior Official the following day. After specifically noting that the flight itineraries to the conference city were “shorter than to/from [the prior conference location],” Program Specialist provided details on the following three flight options for Senior Official, each departing from Washington, DC and arriving at the conference location the following day:

	Total Travel Time	Layover Duration
Option I	11 hours, 50 minutes	1 hour, 10 minutes
Option II	12 hours, 10 minutes	1 hour, 35 minutes
Option III	17 hours, 25 minutes	6 hours, 50 minutes

Table 3

In this e-mail, Program Specialist explained that “the first two flights are less than 14 hours flight time. However, we usually recommend a layover of at least two hours at Charles de Gaulle (CDG), since it is a very large and complicated airport.”

Program Specialist’s e-mail is consistent with the Division Director’s statements to the OIG that the Sponsoring Division typically recommends conference participants travelling through Charles de Gaulle airport arrange for a layover of at least two hours. When questioned by the OIG, Program Specialist similarly stated that the Sponsoring Division recommends a layover time of at least an hour and a half to two hours when traveling through Paris, explaining that she believed the recommendation may have been based upon her supervisor’s own experiences. These recommendations contrast, however, with statements made by an official within the Department’s Office of Financial Management, who told the OIG that department travelers should be guided by airline recommendations for ticketing when evaluating the sufficiency of proposed layovers. Additionally, evidence received by the OIG indicates that there may have been pressure to accommodate Senior Official’s desire to take a rest stop en route to the conference and that the Sponsoring Division utilized the lack of a sufficiently long

⁵⁰ One hour before reaching out to Program Specialist, Senior Official asked personnel within the Travel Management Division for “clear guidance on the rules addressing combining personal time and business travel.” The response Senior Official received the following day cited to the travel regulation contained in Section C301-84.2 of the Travel Handbook set forth above, and noted that “[travel agent] can only issue a ticket for official travel. The traveler can then take the ticket to airlines and make whatever changes that are necessary to accommodate their personal travel.”

layover as a justification for applying the 14-Hour Rule to Senior Official's travel only after the rule's applicability under the circumstances was questioned.

Despite the Sponsoring Division's purported two-hour rest stop recommendation, both of the other Department travelers attending the conference with Senior Official elected to take flights with itineraries consistent with Option I and Option II, both of which had scheduled layovers less than two hours. Moreover, a review of the six travel orders for direct air travel between Washington, DC and the conference location sponsored by the Sponsoring Division during the same fiscal year, including travel by the Division Director herself, revealed that all six travel orders contemplated layover times of one hour and thirty-five minutes or less.⁵¹ In other words, no traveler who actually flew directly from Washington, DC to the conference location elected an itinerary consistent with Option III, the only option that would satisfy a recommendation that travelers take a layover of at least two hours. This is consistent with the evidence that there was pressure to accommodate Senior Official's desire to apply the 14-Hour Rule and that Program Specialist was instructed to reference a two-hour layover recommendation in order to justify its application.

Shortly before the conference, a travel order was issued authorizing Senior Official's travel to the conference location. Consistent with Senior Official's prior e-mail setting forth that she intended to "combine personal time in conjunction with this trip and utilize the Paris connection to do so," the travel order noted that Senior Official would take personal leave while en route to conference location, and that Senior Official "will have an authorized rest stop . . . in the layover location due to travel exceeding 14 hours." Attached to the travel order was the following flight itinerary for Senior Official's travel between Washington, DC and the conference location:

Day 1, 4:15PM: Depart Washington, DC
Day 2, 5:45AM: Arrive Paris, France
Day 6, 12:35PM: Depart Paris, France
Day 6, 2:40PM: Arrive conference location

The total cost of Senior Official's airfare listed on the official travel voucher for her trip was \$2994.73. A review of the official travel vouchers for both of the other Department employees who attended the conference listed the cost of their airfare for tickets utilizing the Option I and Option II itineraries as \$2229.53 and \$2228.93, respectively.⁵² Therefore, according to the travel vouchers, Senior Official's airfare cost was approximately \$765 greater than airfare

⁵¹ Five of the six travel orders reviewed utilized an itinerary with flight times identical to that of Option II in Program Specialist's e-mail to Senior Official. The one remaining travel order reviewed utilized an itinerary with flight times identical to that of Option I presented to Senior Official; however, witnesses recall and the documentary evidence indicates that the traveler utilizing this itinerary missed her connection in Paris, supporting a division recommendation that travelers schedule a layover longer than one hour and ten minutes at Charles De Gaulle airport.

⁵² A review of accounting records for Senior Official and one other traveler confirms that the amounts listed on the travel vouchers associated with this conference are an accurate reflection of the total amount paid by the division for their travel expenses within a few dollars. CMS Doc. No. 71 (listing Senior Official's total airfare cost at \$3029.06—inclusive of an additional \$30.73 travel agent fee not included on Senior Official's travel voucher—and Program Specialist's total airfare cost at \$2229.53).

ALL WITHHOLDINGS PURSUANT TO EXEMPTIONS (B)(6) & (B)(7)(C)

charges incurred by other Department personnel travelling directly from Washington, DC to the conference.⁵³

4. Senior Official Participates in the International Conference

Senior Official told the OIG that she participated fully in the international conference. Statements by other conference attendees as well as written materials from the conference confirm that Senior Official was one of six presenters at the three-day conference, participated in the opening/welcoming ceremony of the conference, and made a presentation lasting somewhere between 45 to 90 minutes. Senior Official stated that, in addition to her formal duties as a presenter, she participated in working sessions with other presenters to prepare for the conference and was present at the conference for the entirety of each day. Other conference attendees also told the OIG that Senior Official was present throughout the entirety of the conference and made herself available to answer conference participants' questions when they arose.

5. Senior Official Seeks Reimbursement for Certain Expenses Associated with a Rest Stop in Paris Taken in Conjunction with Her Personal Leave

Upon her return to Washington, DC, Senior Official submitted a travel voucher for reimbursement of costs associated with her travel to the international conference. Travel records indicate that Senior Official was reimbursed for the following costs associated with the time Senior Official spent on leave while en route to the conference:

Per Diem	
Meals and Incidental Expenses	\$167.00
Lodging Amount	\$233.02
Common Carrier Expenses	
Taxi from CDG to Hotel	\$97.91
Taxi from Hotel to CDG	\$84.86
Miscellaneous Expenses	
Finance Charges	\$9.00
International Fees	\$5.32
TOTAL	\$597.11

Table 4

⁵³ The other participants' total round-trip cost was consistent with the historical city-pair fare amount listed on the GSA's website as the effective airfare rate for travel between Washington, DC and the city in which the conference was held for the relevant fiscal year. See [REDACTED] *CPP_Awards_updated_03.19.13*, <http://www.gsa.gov/portal/content/103861> (last visited July 10, 2015).

C. Findings and Conclusions

I. *The Evidence Does Not Support a Finding That Senior Official's Participation in the International Conference Was Improper*

The evidence does not support a finding that Senior Official's participation as a speaker at the international conference was an improper use of government funds.

As noted above, Department policy requires that "[t]ravel must be conducted . . . only when necessary to accomplish the mission of the Government."⁵⁴ Contrary to the whistleblower's allegations, multiple witnesses told the OIG that the invitation to participate in the conference was extended to Senior Official based upon her relevant experience at the Department. Additionally, the program manager responsible for organizing and selecting experts and other participants for the conference stated that she believed Senior Official was well-qualified to speak on topics relevant to the conference.

The evidence did not substantiate whistleblower's contention that Senior Official's participation in the conference was improper or wasteful because shopping, rather than official government business, was Senior Official's primary motivation for attending the conference. Additionally, as discussed above, the evidence shows that Senior Official was present throughout the entirety of the conference, provided a substantively relevant presentation of not-insignificant length, and performed all other duties required of conference speakers, such as attending planning meetings and engaging with others as an active participant throughout the conference. The OIG therefore finds that the evidence did not substantiate whistleblower's allegations that Senior Official's participation in the international conference was improper.

Notwithstanding that the evidence does not support finding Senior Official's travel was improper, the OIG notes that the Sponsoring Division did appear to allow considerations other than Senior Official's specific qualifications as a speaker to influence its decision to include her in the conference. In particular, the evidence suggests that the Sponsoring Division's creation of a role for Senior Official as a conference participant was influenced, at least in part, by a desire to increase the division's visibility with an official responsible for approving certain expenditures of the division, including those for travel. Moreover, although witnesses understood that Senior Official had relevant experience in the particular subject area explored at the conference, this experience did not necessarily qualify her as an expert. Indeed, the OIG is confident other more-qualified experts in the subject-matter addressed at the conference existed at the time Senior Official was selected. By allowing considerations other than Senior Official's qualifications as a subject-matter expert to inform its decision to include Senior Official as a speaker at the conference, the Sponsoring Division increased the risk that its decision to include Senior Official would appear to be an attempt to curry favor with an official responsible for approving the division's expenses. As a recipient of public funds, the Sponsoring Division should actively

⁵⁴ TRAVEL HANDBOOK C300.

work to avoid any appearance of impropriety in the manner in which it expends the funds that are entrusted to it.⁵⁵

2. *Senior Official's Travel and Expense Reimbursements Did Not Comply with the FTR or Department Travel Policies*

Although the evidence does not support finding that Senior Official's participation in the international conference was improper, the OIG's investigation revealed that Senior Official's travel arrangements and expense reimbursement did not comply with the FTR or the Department's travel management policies and procedures.

a. Senior Official Was Not Entitled to Reimbursement for Expenses Related to a Rest Stop in Paris

As discussed above, pursuant to the 14-Hour Rule, federal agencies may authorize a traveler to take a rest period not in excess of 24 hours at either an intermediate point or at the location of the traveler's destination provided certain conditions are met, including that the traveler use a direct or usually traveled route.⁵⁶ The Comptroller General, who is empowered under 31 U.S.C. § 3529 to issue decisions resolving agency questions regarding payments to be made by a disbursing official or head of an agency, has found that an agency may refuse to apply the 14-Hour Rule when a traveler takes personal leave at a layover location while en route to her destination.⁵⁷ In particular, the Comptroller General found that an agency may determine that taking personal leave at a layover location negates the 14-Hour Rule's requirement that a traveler use a "direct" travel route.⁵⁸ Although not explicitly addressed in the Department Travel Handbook, an official in the division responsible for administering the Department's travel management program told the OIG that, under Department travel policies, personal leave at a layover location will negate a traveler's entitlement to a rest stop under the 14-Hour Rule.⁵⁹

⁵⁵ See 5 C.F.R. § 2635.101(b)(1) ("Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain."); *id.* § 2635.101(b)(14) ("Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.").

⁵⁶ 41 C.F.R. § 301-11.20(a).

⁵⁷ Jay D. Cronk, B-251142, Apr. 21, 1993 ("[W]e believe that it is proper for [an agency] to place limitations upon reimbursement of per diem for rest periods, i.e., by negating the rest stop where annual leave is taken during the period of travel.").

⁵⁸ *Id.* ("The term 'direct' may refer to the direct route of travel, or in a broader sense, to travel that is continuous, without interruption.").

⁵⁹ See also CMS Doc. No. 75 exh. 5 (e-mail from Travel Management Division official attaching Cronk decision and noting that "if a person breaks (personal leave) at [sic] the a rest stop, he negates the ability to be reimbursed for the rest stop"). This interpretation is consistent with interpretation of the 14-Hour Rule by the Department of Defense, whose interpretive guidance is explicitly referenced on the Department of Commerce "Travel Regulations" website as "[o]ther travel-related guidance." See Office of Fin. Mgmt., Travel Regulations, http://www.osec.doc.gov/ofm/OAP/TMD/Travel_Regulations.html (last visited July 10, 2015) (providing a link to PER DIEM, TRAVEL & TRANSP. ALLOWANCE COMM., DEP'T OF DEFENSE, JOINT TRAVEL REGULATIONS 4415(C)(4) (2014) ("An en route rest stop at Gov't expense is prohibited when: . . . [a] traveler takes leave at a stopover.")).

This interpretation of the 14-Hour Rule is consistent with the purpose of the rule, which the Comptroller General has recognized is “to permit enlargement of travel time at government expense in certain instances to help the traveler overcome the effects of ‘jet lag’ or other effects associated with long, wearisome, and sometimes arduous travel.”⁶⁰ When, however, personal leave taken by a traveler acts to break up what would otherwise be “long, wearisome, and sometimes arduous travel,” the necessity for providing the traveler a rest stop at government expense to counteract the negative effects of travel is eliminated.

It is undisputed that Senior Official took three days of personal leave at her layover location while en route to the international conference. Under the FTR and stated Department policy, this leave should have negated any claim for payment of per diem expenses associated with time Senior Official spent at her layover location. The evidence shows that the Sponsoring Division failed to properly apply the 14-Hour Rule and permitted Senior Official to receive reimbursement for approximately \$600.00 in expenses to which she was not entitled. Additionally, Senior Official should have known the 14-Hour Rule was being incorrectly applied in light of her position as an authorizing official for travel expense reimbursements for her division within the Department as well as her knowledge of and experience in applying the rule.

The evidence also suggests that the Sponsoring Division’s failure to correctly apply the 14-Hour Rule in accordance with stated Department policy resulted from a lack of formal, written guidance regarding the rule’s application when a traveler elects to take personal leave at a layover location. When interviewed by the OIG, the operations manager of the Sponsoring Division stated that she believed that, as of the date of Senior Official’s travel, Department travel policy permitted reimbursement of Senior Official for a rest stop at her layover location even though Senior Official took personal leave. The operations manager’s statements to the OIG were consistent with an e-mail she sent approximately six months after submission of Senior Official’s travel voucher for reimbursement that provided what operations manager described as “new” guidance on the 14-Hour Rule. In particular, the e-mail instructed division personnel that “[l]eave at an authorized rest stop location . . . negates a traveler’s entitlement to per diem (M&IE and lodging).” Therefore, the evidence indicates that the operations manager’s belief that, at the time of Senior Official’s travel, personal leave at a layover location did not negate the 14-Hour Rule was held in good faith. Nonetheless, the evidence also indicates that if the operations manager had sought advice from the Travel Management Division regarding the 14-Hour Rule in connection with Senior Official’s travel, her misunderstanding of rule’s applicability would likely have been corrected.

b. The Travel Order Incorrectly Authorized Expenditures for a More Expensive Itinerary Than Was Necessary

As discussed above, federal civilian employees traveling at government expense must conduct their travel in “the most effective and efficient manner possible” and “exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.”⁶¹

⁶⁰ Kevin Murphy, B-255791, Apr. 25, 1994.

⁶¹ 41 C.F.R. § 301-2.3; TRAVEL HANDBOOK C300.

The decision to provide Senior Official the option of selecting the Option III itinerary did not comply with this general principle of limiting government expenditures for official travel.

Prior to discussing specific flight itineraries with Program Specialist, Senior Official made clear that she did not intend to utilize whatever direct flight itinerary would be associated with her official travel because she “would like to go over early . . . and take leave in Paris.” Had Senior Official and Program Specialist sought to minimize travel costs to the government as required under the FTR and Department policy, Option III would not have been considered a viable itinerary for Senior Official’s travel because it was not the most cost-efficient flight itinerary.

First, the Option III itinerary cost more than both the Option I and Option II itineraries proposed by Program Specialist by \$765.80 and \$765.20, respectively. Based on the difference in ticket price alone, Option III should have been eliminated as a potential itinerary for Senior Official’s trip.⁶²

Second, because Option III resulted in a total travel time of more than 14 hours, the itinerary was less cost-efficient for the government than either Option I or Option II because it permitted authorization of a rest stop pursuant to the 14-Hour Rule. That, in turn, would necessarily result in increased government cost in the form of traveler reimbursement for per diem expenses that would not otherwise have been reimbursable.

The only justification witnesses offered for including Option III in the itineraries available to Senior Official was that the Option I and Option II itineraries had insufficient layovers because they were less than two hours long. The evidence suggests, however, that this justification may have been a pretense to enable Senior Official to take advantage of the 14-Hour Rule. As an initial matter, witnesses’ articulation of the Sponsoring Division’s recommended layover length varied from between 1.5 to 2 hours. Moreover, the evidence reviewed by the OIG suggests that there was pressure to accommodate Senior Official and that the insufficient layover justification was raised only after the applicability of the 14-Hour Rule to Senior Official’s travel was questioned.

Even if this recommendation was not pretextual, the evidence establishes that Option II, which provided a layover of one hour and 35 minutes, was sufficient for multiple other travelers whose direct air travel between Washington, DC and the conference location was scheduled during the same fiscal year. This fact, along with the Office of Financial Management official’s statement to the OIG that travelers should follow airline recommendations when evaluating the sufficiency of proposed layovers, calls into question the prudence of the Sponsoring Division’s two-hour layover recommendation. This is particularly true where, as here, the government-contracted carrier offered an itinerary with a shorter duration layover at a price consistent with the negotiated city-pair rates that was less expensive than the only itinerary that complied with the Sponsoring Division’s two-hour-layover recommendation.

⁶² The OIG notes that it did not uncover any evidence that Senior Official was aware that the Option III itinerary was more expensive than the other alternatives provided to her.

Based on the totality of the evidence, the Sponsoring Division should not have permitted Senior Official to select the Option III itinerary as that flight option resulted in higher costs to the government than viable alternatives available to her.

3. Senior Official's Decision to Seek Reimbursement for Expenses Associated with Her Personal Leave in Paris Reflected a Lack of Judgement and Violated the FTR and Department Policy

The OIG finds it troubling that Senior Official utilized the 14-Hour Rule to justify a request for reimbursement of expenses related to her own personal leave while en route to the conference. As noted above, Senior Official explained to the OIG that her office is responsible for reviewing and approving travel orders and vouchers for all offices within her division, including the Sponsoring Division. She also explained that during the time in question she was responsible for “mak[ing] sure that things are consistent with the FTR” and that travel accorded with Department travel policies. Therefore, Senior Official should have recognized that by selecting the Option III itinerary—one whose sole justification (a sufficient layover time) was eliminated by her decision to take three days of personal leave at the layover location—she unnecessarily increased the government’s travel costs. Moreover, Senior Official should have understood that she was the sole beneficiary of her flight selection as it resulted in her being reimbursed for personal expenses unrelated to her official travel.

Senior Official stated that her understanding was that, when a traveler is presented with two flight itineraries, one over and one under 14 hours, the traveler would not be entitled to use the 14-Hour Rule to seek reimbursement for expenses even when the longer flight schedule was selected. Notwithstanding her understanding of the rule, Senior Official sought and received reimbursement for expenses incurred under the 14-Hour Rule in just such circumstances. Therefore, her conduct violated her own understanding of the travel regulations. When asked why she believed she was able to claim per diem for an authorized rest stop in this case, Senior Official stated she was entitled to operation of the 14-Hour Rule because the Sponsoring Division had recommended she select an itinerary that provided her with a sufficient layover between flights. Senior Official did not, however, explain why she believed that this recommendation should still be followed when she had decided to take leave at the layover location prior to finalizing her travel plans—thereby eliminating the risk that she would miss a connecting flight.⁶³

Based on the totality of the circumstances and evidence, it appears that Senior Official’s selection of the longer itinerary was likely motivated by a desire to be reimbursed for one night’s hotel room and receive one day’s per diem, rather than to ensure that she provided adequate time to make a connecting flight. Such a decision not only reflects poor judgment by Senior Official, but also violated federal regulations and Department policies requiring that travel “be conducted in the most effective and efficient manner possible,”⁶⁴ and that a traveler

⁶³ In response to the OIG’s questions, Senior Official repeatedly returned to her statement that selection of the itinerary permitting her to utilize the 14-Hour Rule was based upon the recommendation of the Sponsoring Division.

⁶⁴ TRAVEL HANDBOOK C300.

“exercise the same care in incurring expenses that a prudent person would exercise if travelling on personal business.”⁶⁵

III. Alleged False Time and Attendance Claims

The third allegation in the initial whistleblower complaint was that Senior Official engaged in time and attendance fraud. When interviewed by the OIG regarding her specific concerns, the whistleblower recounted her observations with respect to one specific instance in 2012 that led her to conclude that Senior Official had entered a false start time in timekeeping records. However, during the pendency of the OIG’s investigation, two other witnesses provided the OIG with anecdotal evidence that raised broader questions regarding the accuracy of Senior Official’s time and attendance records.

The OIG investigated the time and attendance fraud allegations by interviewing relevant witnesses, as well as reviewing Department time and attendance records and Senior Official’s e-mail. The OIG’s review of Department records revealed numerous discrepancies between the arrival and departure times recorded by Senior Official in her time and attendance records and the actual arrival and departure times suggested by records associated with her security badge. These discrepancies do not conclusively establish that Senior Official submitted false time and attendance claims to the government; however, the OIG finds they are particularly troubling given (i) their regularity; (ii) evidence that, on at least one occasion in 2014, Senior Official recorded eight hours of telework when it is more likely than not she performed substantially less than eight hours of work that day; and (iii) Senior Official’s demonstrated pattern of disregard for proper utilization and conservation of government resources discussed in Parts I and II of this report.

A. Legal and Regulatory Overview

Federal law provides for criminal, civil, and/or administrative remedies when an individual attempts to defraud the government. Under federal criminal law, an individual faces imprisonment for a period of up to five years in addition to assessment of criminal fines when she knowingly presents a false claim for payment to the government.⁶⁶ Additionally, pursuant to the False Claims Act, an individual may face civil liability when she either knowingly presents a false or fraudulent claim to the government or knowingly makes or uses a false record material to a false or fraudulent claim.⁶⁷

⁶⁵ *Id.*; 41 C.F.R. § 301-2.3.

⁶⁶ 18 U.S.C. § 287 (“Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.”).

⁶⁷ 31 U.S.C. § 3729 (“[A]ny person who—(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or] (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim . . . is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 . . . plus three times the amount of damages which the government sustains because of the act of that person.”). However, when the total amount sought to be

B. Statement of Facts

I. Procedures for Recording Time in Senior Official's Office

Senior Official's operating unit permits employees to work on a flexible work schedule called a "variable week schedule." Under the variable week schedule, an employee is required to work 80 hours in each biweekly pay period; however, the employee has flexibility with respect to the number of hours worked on a particular day or in a particular week.⁶⁸ When completing the basic 80-hour work requirement, employees are required to work during certain "core hours" each workday in the pay period, but can otherwise vary their schedule from week to week and day to day outside of those core hours.⁶⁹

Multiple witnesses told the OIG that, during Senior Official's tenure as supervisor of the office, employees used a standard form to record their arrival and departure times.⁷⁰ These witnesses explained that the entries made by employees on this standard form were used to calculate the number of hours worked on a particular day and to record those hours—including the employees' daily "Time In" and "Time Out"—in webTA, the Department's web-based payroll system. Senior Official also stated that she utilized the attendance log to verify and certify time entries for other employees in her office.⁷¹ When asked what, specifically, she and her employees recorded in the attendance log, Senior Official stated that the log recorded "[w]hen we arrive to report to work and when we finish work."

recovered by the government in connection with an individual's knowing presentment of a false claim is less than \$150,000, the Program Fraud Civil Remedies Act provides for an administrative remedy permitting recovery of a civil penalty of up to \$5,000 per claim in addition to an assessment in an amount up to twice that of the false claim. 31 U.S.C. §§ 3802(a); 3803(c); see 15 C.F.R. pt. 25 (setting forth Department regulations implementing the Program Fraud Civil Remedies Act of 1986).

⁶⁸ Office of Human Res. Mgmt., Dep't of Commerce, *AWS: Flexible Work Schedule Types*, http://hr.commerce.gov/Employees/Leave/DEV01_006015 (last visited July 10, 2015). The authority to establish, modify, or terminate a particular flexible work schedule is delegated to each Department of Commerce operating unit. Office of Human Res. Mgmt., Dep't of Commerce, *Alternative Work Schedules*, http://hr.commerce.gov/Practitioners/CompensationAndLeave/DEV01_006140; see Office of Human Res. Mgmt., Dep't of Commerce, *Alternative Work Schedules (AWS)*, http://hr.commerce.gov/Employees/Leave/DEV01_005923 (last visited July 10, 2015). When, however, an operating unit authorizes a flexible work schedule, federal regulations require that there be established "a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period." 5 C.F.R. § 610.404.

⁶⁹ *Id.*

⁷⁰ The Department of Commerce Office of Human Resources Management has explicitly recognized that use of an attendance log is sufficient to comply with the legal requirement that there be an affirmative means for ensuring employees meet their hours of work requirement. Office of Human Res. Mgmt., Dep't of Commerce, *Alternative Work Schedules*, http://hr.commerce.gov/Practitioners/CompensationAndLeave/DEV01_006140 (last visited July 10, 2015). This practice was utilized prior to the time at which Senior Official became the head of her office.

⁷¹ The previous supervisor for Senior Official's office told the OIG that she similarly utilized the attendance log to ensure that employees' entries in webTA, including those of Senior Official, were consistent with recorded arrival and departure times.

2. Senior Official's Time and Attendance Recording Practices

Senior Official told the OIG that she has been driving to work since approximately late 2012, noting that she began parking on-site at the Herbert C. Hoover Building (HCHB) in approximately November 2013. Senior Official explained that she enters the building through a particular badge-controlled entrance (HCHB Entrance), which requires her to swipe her security badge upon entry to unlock the door. She also stated that she utilizes the same door to exit the building when leaving to go home for the day.⁷²

Consistent with the office policy described above, Senior Official told the OIG that she recorded her arrival and departure times in the office's hard-copy attendance log and used the completed attendance log to enter her time into webTA. Senior Official explained that she would record in the attendance log either her exact arrival time or an approximation to the nearest 15-minute increment based upon either the time displayed on the wall clock, her phone, or her watch.⁷³ She also noted that the arrival time may represent "the time that [she] started work without walking through [her] office" in the event she was engaged by others in work matters on her way from her car to her office. Nonetheless, Senior Official explained that she would expect that the time on the office attendance logs would be later than the time at which her first badge swipe was recorded when entering HCHB in the morning.

When asked to describe her practice with respect to recording her departure time on the attendance log, Senior Official stated that "most days [she] record[s] the time that either the clock says, or [her] watch says, or [her] cell phone says." However, she also explained that for those days on which she attended a meeting after departing HCHB she would record the time that the meeting was scheduled to end as her departure time. Senior Official told the OIG that this "hasn't been happening a lot recently," and the only specific example she provided of a meeting occurring outside of HCHB that could have resulted in her adjusting her departure time in the attendance log was a standing weekly meeting that, at the time of her interview, had not occurred for approximately a year. Senior Official repeatedly told the OIG that she generally adjusted her departure time in the attendance log only when she was going to attend a meeting outside of the office.

In contrast to Senior Official's description of her time-recording practices, a number of witnesses provided the OIG with anecdotal evidence that Senior Official did not accurately record her time and attendance. Evidence reviewed by the OIG supported these witnesses' observations. For example, a witness told the OIG that on one particular day, she observed Senior Official leaving the office shortly after 3:30 p.m. after informing a co-worker that "she was going to a meeting . . . and then to the gym at the Ronald Regan Building." Because both the gym and the purported meeting were in a building attached to HCHB, one would not

⁷² Although Senior Official stated that she swipes her badge less than half of the time when she exits the building, a review of Senior Official's badge records from January through September 2014 revealed that Senior Official's badge registered at least two swipes in a day on 73 occasions. On 65 of these occasions, the later badge swipes occurred between 4:00 p.m. and 11:00 p.m., which is consistent with these badge swipes representing the time at which Senior Official exited the building on the day in question.

⁷³ Senior Official explained that this time adjustment would be performed automatically when entering time into webTA even if she did not perform the adjustment herself.

expect Senior Official to have returned to her car until after her meeting when departing for the day. The badge records for the particular day in question, however, show that Senior Official's security badge was swiped at the HCHB Entrance at 3:33 p.m., around the time Senior Official was observed leaving her office. In contrast, the attendance log for the date in question reveals Senior Official recorded a 4:15 p.m. departure time.

The evidence reviewed similarly supported this same witness's allegation that Senior Official had inaccurately claimed eight hours of telework time on July 3, 2014. In late June 2014, Senior Official sent an e-mail to the employees within her office entitled "Summer Leave Plans," which listed upcoming days that Senior Official intended to take off from work, including July 3. In addition, a witness told the OIG that Senior Official stated she intended to take leave on July 3 in order to prepare for a party Senior Official would be hosting at her home on July 4. Despite the multiple prior representations that she would take leave on July 3, Senior Official's webTA records indicate that she submitted a claim for eight hours designated "Telework Home" on July 3. A review of Senior Official's e-mail on July 3, 2014, reveals that Senior Official sent only four e-mail messages that day, all of which were sent between 9:46 a.m. and 10:04 a.m. In three of these four e-mails, Senior Official specifically informed the recipients that she was "out of the office" for the day; however, in one e-mail she requested a colleague "keep [her] informed if this evolves while [she was] out of the office" and in another she informed the recipients, "[My colleague] is available to discuss and I am checking e-mail." Senior Official was unable to recall teleworking on July 3, but stated that she would expect records to reflect "work traffic" for that day, noting that her work is "not always just sending e-mails It's reviewing documents, it's preparing – drafting documents."

3. Analysis of Senior Official's Time and Attendance Records Against Security-Badge Data

In connection with its investigation, the OIG performed a review of the arrival and departure times recorded in Senior Official's webTA records against the timestamps associated with occasions Senior Official's security badge was swiped at the HCHB Entrance from January through September 2014.⁷⁴ During the time period under review, Senior Official's security badge registered at least two swipes at the HCHB Entrance for 73 days on which Senior Official also recorded an arrival and departure time in her webTA time and attendance records (the Analyzed Days).⁷⁵

a. Analysis of Arrival Differentials

Figure 2 depicts a breakdown of the difference between the first recorded badge swipe and Senior Officials' arrival time as recorded in her webTA records for the Analyzed Days.⁷⁶ As illustrated in Figure 2, the records show that Senior Official recorded an arrival time that was prior to the first timestamp recording a badge swipe of Senior Official's badge at the HCHB

⁷⁴ The time period selected for review corresponds to the period for which security badge records from the HCHB Entrance were available for Senior Official.

⁷⁵ These 73 Analyzed Days constitute 54% of the 134 days on which Senior Official's webTA records include a specified arrival and departure time. Although timestamps associated with a swipe of Senior Official's security badge at the HCHB Entrance exist for 102 or 75% of these 134 days, the security badge records contain only one timestamp corresponding to Senior Official's badge on 29 occasions.

Entrance on approximately 82% of the Analyzed Days. This suggests that on these days, Senior Official recorded an arrival time in her time and attendance records that was prior to her actual arrival at work. Additionally, the time difference between the earlier sign-in time and the later badge swipe was longer than 15 minutes on more than 25% of the Analyzed Days.

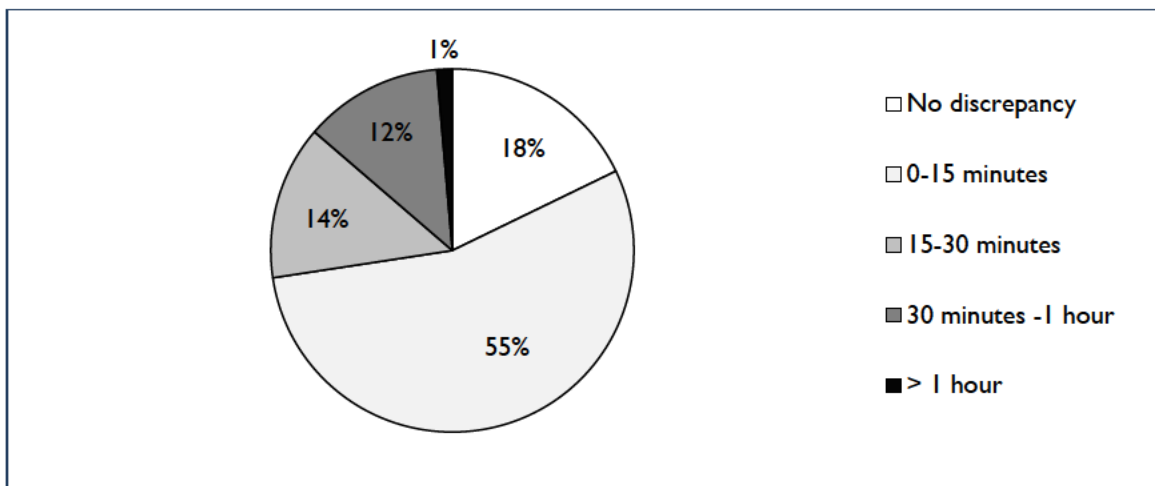


Figure 2: Breakdown of Difference Between First Badge Swipe and Recorded Arrival Time for Analyzed Days by Length of Time Differential

When asked about discrepancies in the security badge and webTA records with respect to when she arrived at work, Senior Official stated that discrepancies could result if, for example, she logs in from home or starts working for the day on her Blackberry. She also told the OIG that these discrepancies may represent time spent working while driving in to work, explaining this may include taking a phone call or answering e-mails as well as time spent sitting in her parking space checking her calendar and e-mails.⁷⁷ Senior Official later stated that she rarely logged in remotely from home in the morning and that more of the discrepancies in arrival time would likely represent time she spent working during her morning commute rather than working from home. Senior Official told the OIG that she believed she would record an earlier time in the attendance log to account for time worked outside the office approximately 35% of the time and stated that she was not consistent with how she accounted for such time.

b. Analysis of Departure Differentials

Figure 3 below depicts a breakdown of the difference between the last recorded badge swipe and Senior Official's departure time as recorded in her webTA records for the Analyzed

⁷⁶ Instances where the first badge swipe for an Analyzed Day occurred either before or at the same time as the arrival time recorded in Senior Official's webTA records are treated for purposes of this analysis as lacking any discrepancy.

⁷⁷ Senior Official's supervisor stated she was not aware Senior Official performed work while commuting to work and believed such a practice was dangerous. Senior Official herself stated that working while commuting was probably not an appropriate practice. Senior Official Tr. at 4127-32 ("Should I be driving and sending e-mails? Probably not. [The state motor vehicle department] would have a different, yeah, opinion.").

Days.⁷⁸ As illustrated below, there was a discrepancy between the departure time recorded in Senior Official's webTA records and the last badge swipe occurring on an Analyzed Day on approximately 62% of the Analyzed Days. This discrepancy was longer than 15 minutes on more than 27, or one-third, of the Analyzed Days.

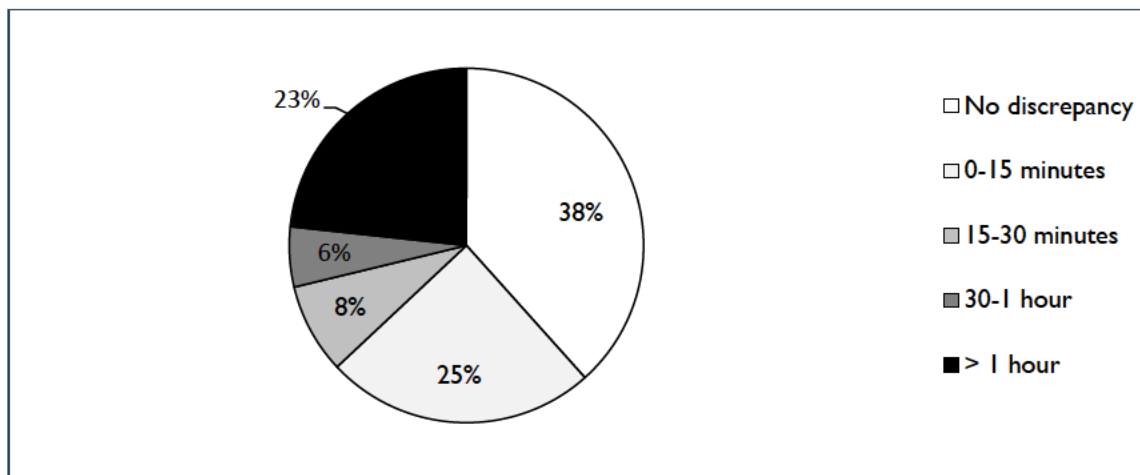


Figure 3: Breakdown of Difference Between Last Badge Swipe and Recorded Departure Time for Analyzed Days by Length of Time Differential

As discussed above, Senior Official told the OIG that such discrepancies in departure time could be the result of accounting for time associated with meetings occurring at the end of her work day. With respect to work or meetings performed after her physical departure from the building, Senior Official stated that such meetings “could be on [her] calendar but [she] would rely more on my e-mails because [she does] a lot of work outside of the building.” A review of Senior Official's calendar entries and e-mails showed that, of the 27 Analyzed Days for which the departure time differential was greater than 15 minutes, Senior Official did not have any meeting entries on her calendar after the last-recorded badge swipe and did not send any e-mails in the time period between the last-recorded badge swipe and the departure time recorded in webTA on more than half of those days.⁷⁹

C. Findings and Conclusions

The OIG's analysis of Department records shows numerous discrepancies between Senior Official's badge records, which indicate when Senior Official arrived and departed from work, and the time Senior Official recorded on her official time and attendance records. The evidence also establishes that, at times, Senior Official performed work outside of the hours she was

⁷⁸ Instances where the last badge swipe for an Analyzed Day occurred either after or at the same time as the departure time recorded in Senior Official's webTA records are treated for purposes of this analysis as lacking any discrepancy.

⁷⁹ On two of the days for which e-mails were sent during the period between the last-recorded badge swipe and the departure time recorded in Senior Official's webTA records, these e-mails bear a signature line indicating they were sent from an iPad, consistent with a finding that Senior Official was not in the office at the time the e-mails were sent.

physically in the office on her non-telework days. Time associated with such work was not, however, designated as telework within webTA. In light of all the evidence, the discrepancies between Senior Official's badge and time and attendance records alone do not conclusively establish Senior Official's webTA entries constituted false claims or were made with knowledge of their falsity.

Nonetheless, the OIG finds the number and regularity of the inconsistencies identified troubling, particularly in light of evidence calling into question the accuracy of Senior Official's time and attendance claims on individual work days. For example, as described above, the evidence does not support Senior Official's claim that she engaged in eight hours of telework on July 3. Rather, the evidence shows that Senior Official sent an e-mail to her staff on June 26 stating that she intended to take leave for the day and made statements to a witness that she was taking leave to prepare for a party she was hosting. On the day in question, Senior Official sent only four e-mails during a 20-minute time period at the beginning of the work day, writing in one such e-mail that she was "checking e-mail," but directing questions be sent to her colleague. This statement implies that, although she could be contacted if necessary, Senior Official's attention was otherwise diverted while she was out of the office. Indeed, one recipient responded to Senior Official that she should "[e]njoy [her] time off," indicating that others believed Senior Official was in a leave status for the day. This evidence indicates that it is highly likely that Senior Official performed far less than eight hours of telework on July 3, and that the time claimed in webTA for that date was therefore inaccurate.

Moreover, given other findings in this report indicating Senior Official did not act with the utmost concern for preserving government resources in other areas of her employment, the OIG is concerned that the inconsistencies revealed by its analysis could be indicative of a disregard for the importance of accurate timekeeping that may have resulted in Senior Official receiving pay for time not actually worked.

Finally, Senior Official initially told the OIG that there should not be any occasions on which the timestamp associated with her entry into HCHB was after the arrival time recorded in her time and attendance records. It was only after she was told that the records did not support this statement that Senior Official asserted she performed work while commuting to work or while sitting in her parked car in the parking lot. Weighing the two statements against one another, the OIG finds that Senior Official's latter testimony lacks credibility, which raises serious concerns regarding Senior Official's candor and casts further doubt on the veracity of Senior Official's time and attendance claims. Even if the OIG were to credit Senior Official's statements regarding time she spent working while commuting, such conduct would be improper because it violates Executive Order 13513, which prohibits federal employees from reading from or entering data into any handheld or other electronic device while driving "when using electronic equipment supplied by the Government,"⁸⁰ as well as state and District of Columbia traffic laws.⁸¹

⁸⁰ Exec. Order No. 13,513, 74 Fed. Reg. 51,225 (Oct. 6, 2009).

⁸¹ MD. CODE ANN., TRANSP. § 21-1124.1; VA. CODE ANN. § 46.2-1078.1; D.C. CODE § 50-1731.04.

IV. Failure to Take Reasonable Steps to Comply with OIG Preservation Order

In connection with its investigation of alleged misuse of government equipment, the OIG issued an order to Senior Official demanding the return of all government-issued IT devices she utilized outside of the office and instructing Senior Official to take steps to ensure that the data on these devices was not accessed, modified, or deleted. In compliance with this preservation order, Senior Official turned over to the OIG multiple computer devices, including the third iPad issued to her. When the OIG attempted to conduct a forensic analysis of this iPad, it was discovered that the iPad had been locked and remotely erased, raising concerns that Senior Official had failed to comply with the OIG's preservation order and acted to obstruct the OIG's investigation. After interviewing Senior Official and reviewing Apple's "Find My iPhone" feature, the OIG finds that the evidence strongly suggests Senior Official intentionally engaged in conduct to impede the OIG's access to information on the iPad. At a minimum, the evidence established Senior Official acted with reckless disregard of her obligations under the OIG's preservation order in violation of Department policy requiring that employees "cooperate fully" with an OIG investigation.

A. Legal and Regulatory Overview

1. Federal Criminal Law Prohibits Obstruction of an OIG Investigation

Section 1505 of Title 18 of the *United States Code*, titled "Obstruction of proceedings before departments, agencies, and committees," provides that anyone who "corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States" may be found guilty of a crime and punished by imposition of a fine, imprisonment for up to five years, or both.⁸² In *United States v. Kelley*,⁸³ the United States Court of Appeals for the District of Columbia Circuit held that a formal investigation by an Office of the Inspector General constitutes a "proceeding" within the meaning of Section 1505. With respect to a charge under Section 1505, an individual may be found to have acted "corruptly" when she acted "with an improper purpose, personally or by influencing another, including . . . withholding, concealing, altering, or destroying a document or other information."⁸⁴

In addition to Section 1505's general prohibition against obstructing agency proceedings, federal criminal law contains prohibitions against the wrongful destruction, modification, or concealment of documentary or certain physical evidence to impair its use in a federal investigation or an official proceeding.⁸⁵

⁸² 18 U.S.C. § 1505.

⁸³ 36 F.3d 1118, 1127-28 (D.C. Cir. 1994).

⁸⁴ 18 U.S.C. § 1515(b).

⁸⁵ See, e.g., 18 U.S.C. §§ 1512(c), 1519; see also 18 U.S.C. § 2232(a) ("Whoever, before, during, or after any . . . seizure of property by any person authorized to make such . . . seizure, knowingly destroys, damages, wastes,

2. Department Regulations Require Compliance with OIG Investigations

In addition to the statutes above, Departmental Administrative Order 207-10 (DAO 207-10) requires that all departments and employees cooperate with OIG investigations. Such cooperation includes, among other things, “furnish[ing] the OIG upon request access to and copies of all records, communications . . . , documents, papers, data or other information requested;” “cooperat[ing] fully with any OIG investigation;” and refraining from “withhold[ing] information or documentary materials from the OIG.”⁸⁶ Pursuant to DAO 207-10, failure by a department officer or employee to co-operate “fully and without delay” with an OIG investigation constitutes grounds for discipline.⁸⁷

B. Statement of Facts

On November 3, 2014, the OIG issued a data preservation order to Senior Official in connection with its ongoing investigation into Senior Official’s alleged misconduct. The preservation order required Senior Official to “take necessary steps to preserve any and all government-owned Information Technology (IT) devices (including desktop computers, laptop computers, and tablets) used by [Senior Official] or members of [her] family outside of the Herbert C. Hoover Building.” Additionally, the preservation order demanded Senior Official return these devices to the OIG and “take immediate steps to ensure the government-owned IT devices are not accessed or destroyed and that the data contained on those devices are not accessed, modified, or deleted.” The preservation order specifically instructed Senior Official not to “delete or modify any profiles, programs, applications, documents, files (including photo, audio and video), or web browsing history.”

On November 6, 2014, in compliance with the preservation order’s requirement that she return to the OIG any government-owned IT devices Senior Official or her family members used outside HCHB, Senior Official turned over to the OIG an iPad Air tablet, a Dell laptop computer, and a Dell desktop computer. The following day, the OIG interviewed Senior Official regarding the allegations of misconduct discussed in Parts I, II, and III of this report. During this interview, Senior Official was shown photographs and other evidence collected from the OIG’s forensic analysis of one of her government-owned desktop computers, including evidence of the inappropriate materials present on that desktop.

On November 26, 2014, an investigator with the OIG e-mailed Senior Official’s attorney and requested that Senior Official provide “the user name and password for the government-issued iPad she turned over . . . on 11/6/2014.” Shortly thereafter, the OIG attempted to conduct a forensic analysis on the iPad Air tablet Senior Official had returned. Once powered on, the tablet’s screen read “Lost iPad” and displayed a telephone number. A second screen-displayed message stated: “Activate iPad. This iPad was lost and erased. Sign in with the Apple ID that

disposes of, transfers, or otherwise takes any action, or knowingly attempts to [do so], for the purpose of preventing or impairing the Government’s lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.”)

⁸⁶ DAO 207-10 §§ 6.01, 6.02(a).

⁸⁷ *Id.* § 6.03.

was used to erase this iPad. Message from Owner: [Telephone Number].” Senior Official confirmed the number listed in both on-screen messages was her personal cellular telephone number.

When asked about the erasure of information from the government-owned iPad, Senior Official stated that she did not know why the iPad had been locked and/or erased. She told the OIG that, in approximately mid-November to early December (which was after she received the OIG’s preservation order), she reached out to Apple for instructions on how to download the personal information that was contained on the government-owned iPad, which was in the OIG’s custody, onto a newly purchased personal Apple device. She stated that, when she explained to an Apple representative that she needed access to her personal iCloud information, the representative told her that she could download that information onto her new device from the iCloud using the Lost My iPhone⁸⁸ feature and that she followed the representative’s instructions.⁸⁹

When asked about her use of the Find My iPhone feature, Senior Official stated that she did not believe her actions would result in wiping the device in the OIG’s custody. However, Senior Official also told the OIG that, during her conversation with the Apple representative she did not inquire regarding what would happen to the data on the government-issued iPad when utilizing the Find My iPhone feature, did not make inquiries regarding how she could ensure all data was preserved on the government-issued iPad, and did not inform the representative that the information on the government-issued iPad was subject to a preservation order. Senior Official later told the OIG that she did inform the Apple representative that there was government equipment at issue and that she “could not touch the government account.”

On Apple’s support website, Find My iPhone is described as a feature that allows users to take any of the following actions with respect to a device for which the feature has been set up: locate the device on a map, play a sound on the device, use Lost Mode to lock and track the device, or remotely erase all personal information from the device. Additionally, the support pages on Apple’s website for the Find My iPhone feature show that to utilize this feature, a user must visit the iCloud.com website, select the device for which an action is desired, and then indicate what action the user desires to take with respect to that device by clicking on one of the icons displayed for that device, which correspond to the following actions: “Play Sound,” “Lost Mode,” and “Erase iPad.”⁹⁰ Nowhere on these support web pages is the Find My iPhone

⁸⁸ During the course of her interview with the OIG, Senior Official referred to the “Find My iPhone” feature as “Find My iPad.” For consistency, this report utilizes Find My iPhone for all references to this Apple application. See iCloud: Find My iPhone overview, https://support.apple.com/kb/PH2696?viewlocale=en_US&locale=en_US (last visited June 24, 2015) (“Find My iPhone helps you locate and protect your iPhone, iPad, iPod touch, or Mac if it’s ever lost or stolen.”).

⁸⁹ In her prior interview, Senior Official told the OIG that she became familiar with the Find my iPad feature when she received her iPad Air.

⁹⁰ See iCloud: Erase your device, https://support.apple.com/kb/PH2701?locale=en_US&viewlocale=en_US (last visited June 24, 2015).

feature associated with assisting in the setup of a new device or downloading of information from a user's iCloud account to a new device.⁹¹

C. Findings and Conclusions

The evidence indicates that, when Senior Official used the Find My iPhone feature in late 2014 (purportedly to assist in downloading her personal files to new Apple devices), her conduct resulted in making the information on the previously surrendered iPad Air unavailable for analysis by the OIG. Moreover, the proximity of Senior Official's conduct to the OIG's request for the access information associated with this device suggests Senior Official may have intentionally taken steps to prevent the OIG from accessing this information through use of the Find My iPhone feature, implicating federal criminal obstruction-of-justice laws.⁹² Although Senior Official stated that she was simply following directions from an Apple representative and was unaware that her use of this feature would result in making this data unavailable to the OIG, on its face, this testimony appears highly implausible, given Senior Official's familiarity with the device itself and her prior understanding of the Find My iPhone feature. Additionally, this statement appears to lack credibility in light of (i) the timing of Senior Official's actions in proximity to the OIG's request for information regarding her username and password for the iPad, which alerted Senior Official to the OIG's intent to review the information contained on the device, (ii) evidence that use of the Find My iPhone feature is, in fact, unnecessary to retrieve information from iCloud storage when setting up a new Apple device, and (iii) evidence that the Find My iPhone interface requires a user to select precisely what action she wishes to take with respect to a particular device, including either placing a device in "Lost Mode" or erasing the iPad entirely.

Even assuming Senior Official's explanation is credible, Senior Official acted with at least reckless disregard for her obligations under the OIG's preservation order when she took actions that affected the availability of information subject to that order without educating herself regarding the potential consequences of her actions or consulting with the OIG prior to taking such actions. The information provided by the Find My iPhone interface itself provides users with sufficient information to determine the effect use of the feature will have with respect to any iPad device. We concluded that a reasonable person in Senior Official's position would understand use of the Find My iPhone feature would make the information on the iPad in the custody of the OIG unavailable. This fact, as well as Senior Official's failure to educate herself regarding the consequences of her actions, supports a finding that she acted with at least reckless disregard of her obligations under the preservation order, which required her to "take immediate steps to ensure the government-owned IT devices are not accessed or destroyed and that the data on those devices are not accessed, modified, or deleted." Although Senior Official told the OIG that she did inform the Apple representative that there was government equipment at issue and that she "could not touch the government account," the OIG finds it highly unlikely that an Apple representative would counsel Senior Official to take steps that

⁹¹ See *id.*

⁹² See 18 U.S.C. §§ 1505, 1512(c), 1519; see also 18 U.S.C. § 1515(b) (defining "corruptly" for purposes of 18 U.S.C. § 1505 as acting "with an improper purpose . . . including . . . withholding, concealing, altering, or destroying a document or other information").

would have the effect of locking out and erasing the government equipment had she made clear that there was a government account that needed to be preserved. Additionally, the OIG notes that this testimony is inconsistent with other statements Senior Official made indicating that she did not provide relevant information regarding the necessity of preserving all data on the iPad to the Apple representative. Senior Official's reckless disregard of and failure to comply with the OIG's November 3 preservation order violated her obligations under DAO 207-10 to "cooperate fully" with the OIG's investigation and to "furnish the OIG upon request access to and copies of all . . . data or information requested."⁹³

V. Alleged Retaliation Against Cooperating Witness

During the course of the OIG's investigation, the OIG received allegations that Senior Official initiated disciplinary action to suspend one of her subordinates without pay for three days in retaliation for the witness's cooperation in OIG and EEO investigations into Senior Official's conduct. The OIG reviewed the relevant documents as well as Senior Official's e-mail and interviewed Senior Official regarding the proposed suspension. Based on the evidence reviewed by the OIG, it appears that there is credible evidence that Senior Official's proposal to suspend her subordinate may have been motivated in substantial part by a desire to retaliate for the subordinate's cooperation in the OIG's investigation, implicating prohibited personnel practices defined under the Whistleblower Protection Act of 1989 (WPA).

A. Statutory and Regulatory Prohibitions Against Whistleblower Retaliation

Section 2302(b)(8) of the WPA prohibits any federal employee with "authority to take, direct others to take, recommend or approve any personnel action" (a Supervising Employee) from taking or threatening a personnel action against any employee because of the employee's disclosure to the Inspector General of information the employee "reasonably believes evidences . . . (i) any violation . . . of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."⁹⁴ Additionally, Section 2302(b)(9) of the WPA prohibits Supervising Employees from taking or threatening a personnel action against any employee because of "cooperating with or disclosing information to the Inspector General" or testifying for or otherwise lawfully assisting any individual in the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation.⁹⁵

Violation of either Section 2302(b)(8) or 2302(b)(9) is considered a "prohibited personnel practice" for which the Supervising Employee may be subject to discipline.⁹⁶ The United States

⁹³ DAO 207-10 §§ 6.01, 6.02.

⁹⁴ 5 U.S.C. § 2302(b)(8)(B).

⁹⁵ 5 U.S.C. § 2302(b)(9)(B)-(C).

⁹⁶ See 5 U.S.C. § 2302(a)(1) ("For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b)."); 5 U.S.C. § 1215 (permitting Special Counsel to institute disciplinary proceedings against an employee for committing a prohibited personnel practice"); see also DAO 207-751, App. B (listing "[h]arrassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights" as a selected offense for which disciplinary action may be taken).

Court of Appeals for the Federal Circuit has held that disciplinary action for violation of the WPA “require[s] that the whistleblowing activity be a ‘significant factor’ in the reprisal action.”⁹⁷ Among those factors the Federal Circuit and the Merit Systems Protection Board (the administrative body charged with adjudicating disciplinary actions against federal employees) consider when determining whether an employee’s protected disclosure was a “significant factor” in a particular personnel action are: (i) the Supervising Employee’s knowledge of the protected disclosure, (ii) the timing of the personnel action in relation to the Supervising Employee’s discovery of the employee’s protected disclosure, (iii) the Supervising Employee’s motive and desire to retaliate, and (iv) the reasons put forth by the Supervising Employee for the personnel action.⁹⁸

In addition to the WPA, both the Inspector General Act and Department Administrative Order 207-10 prohibit any supervisor from taking or threatening to take “any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General.”⁹⁹

B. Statement of Facts

During the OIG’s investigation, Senior Official participated in an interview with two OIG investigators to discuss the alleged misconduct set forth in Parts I, II, and III of Chapter 2 above.¹⁰⁰ The interview of Senior Official lasted from approximately 1:30 p.m. to 5:45 p.m.

During this interview, Senior Official identified one of her subordinates, Staff Member A, as a witness to a number of incidents that could have given rise to certain of the OIG’s inquiries into Senior Official’s alleged misconduct. For example, Senior Official stated that she recalled discussing her household member’s personal use of government-owned computer equipment with Staff Member A when she was issued a new computer. Additionally, Senior Official identified Staff Member A as having been involved in the acquisition of Senior Official’s third iPad.

Approximately two and a half hours after Senior Official left her interview with the OIG, Senior Official e-mailed a senior lawyer in the Employment & Labor Law Division of the Office of General Counsel for the Department (Senior Counsel), writing:

Attached are electronic versions of the documents I left you earlier showing where [Staff Member A] signed funding authorization on two different occasions despite my telling her not to. [Staff Member A]’s behavior is out of control and she often does things despite my telling her not to. I have other examples in which she has failed to follow my instructions and I have to believe at this point that her behavior is deliberate and to the point of insubordination.

⁹⁷ *Eidmann v. Merit Sys. Prot. Bd.*, 976 F.2d 1400, 1404-06 (Fed. Cir. 1992).

⁹⁸ See, e.g., *id.* at 1407-08; *Special Counsel v. Santella*, 65 M.S.P.R. 452, 466 (M.S.P.B. 1994); *Special Counsel v. Barnett*, 1998 MSPB LEXIS 1593, at *93-104, 161-68 (M.S.P.B. March 12, 1998).

⁹⁹ Inspector General Act of 1978, Pub. L. No. 95-452, § 7(c), 92 Stat. 1105 (1978); DAO 207-10 § 4.04.

¹⁰⁰ During this interview, Senior Official was represented by an attorney who was present throughout the interview.

I need to take corrective action asap and need to understand what my options are.

Senior Official attached to this e-mail an Office Space and Building Management (OSBM) Work Request form (CD-410) authorizing the expenditure of approximately \$75 for purposes of assembling a coat rack. The request form was signed by Staff Member A as the ordering agency official and, on a separate occasion, as the authorized agency official. Along with the CD-410, Senior Official also attached to her e-mail (i) correspondence Senior Official sent to her staff members, including Staff Member A, earlier in the year directing that all funding documents be presented to Senior Official for authorization and signature and (ii) correspondence Senior Official sent to her staff later in the year (but prior to Staff Member A's signing of the CD-410) directing that funding requests during the Continuing Resolution be approved by Senior Official's supervisor and stating that staff members "should expect (or request) that all request for training, travel, etc include a 'mission-essential' justification."

Over the following week, Senior Official and Senior Counsel exchanged a series of e-mails regarding what alleged misconduct should be addressed in any write-up supporting a proposal to take disciplinary measures against Staff Member A and Senior Counsel e-mailed Senior Official a draft memorandum with the subject "Notice of Proposed 3 Calendar Day Suspension." Senior Official provided comments on the draft memorandum later that day, and Senior Counsel circulated a revised draft to Senior Official the following day.

The following week, Senior Official issued a final memorandum to Staff Member A titled "Notice of Proposed 3 Calendar Day Suspension" (Suspension Memorandum). The Suspension Memorandum proposed to suspend Staff Member A without pay for three calendar days based upon Staff Member A's failure to follow a supervisory instruction and lack of judgment. In particular, the memorandum described Senior Official's encounter with individuals directly outside Staff Member A's office on the day of the OIG interview, who informed Senior Official that they had come to assemble a coat rack for Staff Member A. According to the memorandum, these individuals showed Senior Official a CD-410 bearing Staff Member A's signature as both the ordering agency official and the authorized agency official approving expenditure of approximately \$75 for the assembly of a coat rack. The memorandum stated that Staff Member A's conduct constituted a failure to follow a supervisory instruction in light of the instructions Senior Official provided her staff earlier that year that all funding documents were to be presented to Senior Official, as well as her later instructions in late 2014 that all funding requests be submitted to her supervisor for review during the Continuing Resolution. Additionally, the memorandum stated that Staff Member A's conduct constituted a lack of judgment because Staff Member A "elected to use office funds to pay for her coat rack to be assembled at a time when spending is limited to mission critical requirements," noting that it is the duty of Senior Official's office "to set an example for the entire organization when it comes to being careful stewards of limited resources." The memorandum informed Staff Member A that Senior Official's supervisor would be the deciding official and advised Staff Member A of her right to reply to the notice of proposed suspension in writing, orally, or both.

Senior Official told the OIG that she issued the notice of proposed suspension to Staff Member A because she "failed to follow instructions . . . from the point of midyear review on several occasions through . . . the beginning of the fiscal year." Asked what prompted her to send the

e-mail to Senior Counsel seeking to institute disciplinary proceedings against Staff Member A, Senior Official first identified the incident described above as the “incident that I took very seriously.” Senior Official also recounted to the OIG other instances in which Staff Member A failed to follow Senior Official’s directions, including an instance when Staff Member A approved a procurement action authorizing expenditure of \$95,000 without consulting Senior Official and another incident when Staff Member A failed to take a mandatory training Senior Official instructed her to take. Neither of these other incidents, however, was included in the notice of proposed suspension, nor was Staff Member A subjected to formal disciplinary action for them. Although Senior Official acknowledged that there were multiple on-going investigations at this time and that the circumstances of the investigations “created tension,” she denied that these tensions played a part in her initiation of disciplinary proceedings against Staff Member A.

Staff Member A told the OIG that, following her receipt of the Suspension Memorandum, she met with Senior Official’s supervisor and presented the supervisor with her formal response to the proposed suspension. She also told the OIG that, during a subsequent meeting with Senior Official’s supervisor, she acknowledged that she had mistakenly processed the work order for the coat rack without presenting it to Senior Official’s supervisor for approval. According to Staff Member A, after this subsequent meeting, a third meeting occurred between Staff Member A, Senior Official, and Senior Official’s supervisor during which Senior Official stated that she would withdraw the proposed suspension. Shortly thereafter, Senior Official sent a memorandum rescinding the proposed suspension to Staff Member A.

C. Findings and Conclusions

Based on the totality of the circumstances, we concluded that there is sufficient evidence to conclude that Staff Member A’s testimony and protected disclosures to the OIG were likely a significant factor in Senior Official’s recommendation to suspend Staff Member A. Accordingly, we concluded that there is sufficient evidence to find that Senior Official violated Sections 2302(b)(8) and (9) of the WPA.

In particular, the OIG’s analysis of the factors that courts consider when evaluating whether a federal employee has engaged in these prohibited personal practices under the WPA support finding that Senior Official’s decision to recommend disciplinary action against Staff Member A may have been significantly influenced by Senior Official’s perception that Staff Member A engaged in behavior protected under the WPA. First, the evidence shows that Senior Official was aware that the OIG had information regarding her alleged wrongdoing, which information Senior Official told the OIG she associated with a conversation she recalled having with Staff Member A.¹⁰¹ Second, the evidence indicates that Senior Official took the first step towards instituting disciplinary action against Staff Member A in immediate proximity to her discovery that the OIG possessed information she attributed to Staff Member A.¹⁰² Third, the particular

¹⁰¹ See *Eidmann*, 976 F.2d at 1407 (“In order for a protected disclosure to become a ‘significant factor’ in a supervisor’s decision to take a prohibited personnel action, the supervisor would need some knowledge of the disclosure.”).

¹⁰² *Barnett*, 1998 MSPB LEXIS 1593, at *163 (finding an official’s issuance of disciplinary action one day after learning of protected disclosures “supports a finding that . . . [the] disclosures were a significant factor in that matter”).

allegations attributed to Staff Member A by Senior Official—that members of Senior Official’s household utilized government computer resources for non-official uses—resulted in an embarrassing situation in which Senior Official was shown and questioned about inappropriate materials discovered on those government-owned computers. This supports finding that it was likely Senior Official had a strong motive and desire to retaliate against Staff Member A.¹⁰³ Finally, the fact that Senior Official sought disciplinary action for this particular incident—involving approval of expenditure of approximately \$75 to assemble a coat rack during a Continuing Resolution—while not seeking disciplinary action in connection with Staff Member A’s approval of a \$95,000 procurement action without clearing such action through Senior Official, indicates that Senior Official’s recommendation to take disciplinary action would not likely have occurred but for her belief Staff Member A had made protected disclosures regarding her conduct to the OIG.¹⁰⁴ Based on the totality of the circumstances, it appears there is credible evidence that Senior Official believed that Staff Member A provided testimony to the OIG regarding her alleged misconduct and that this belief was a significant factor in Senior Official’s recommendation to suspend Staff Member A in violation of Sections 2302(b)(8) and (9) of the WPA.¹⁰⁵

Chapter 3: Conclusion and Recommendations

The evidence reviewed over the course of the OIG’s investigation into the whistleblower allegations of fraud and waste against Senior Official substantiated many of the whistleblower’s claims. In particular, the evidence revealed that Senior Official engaged in a pattern of conduct exhibiting a disregard for and abuse of government resources, including: (i) use of government property for unofficial and inappropriate purposes; (ii) failure to conserve government resources by accumulating duplicative government-owned computer resources for home use over an extended period of time; and (iii) failure to exercise good judgment when making travel arrangements that resulted in benefitting her personally while increasing cost to the government. Moreover, although the OIG investigation did not conclusively establish that Senior Official submitted false time and attendance claims, the OIG is troubled by the number of apparent inconsistencies between Senior Official’s timekeeping and security badge records that were uncovered during its investigation. Finally, the OIG has serious concerns regarding Senior Official’s conduct during the course of the investigation. Not only did Senior Official fail to take reasonable steps to comply with the OIG’s preservation order, thereby preventing the OIG from completing its analysis regarding the extent of her inappropriate use of government-owned computer devices, but there is also credible evidence that she may have engaged in prohibited whistleblower retaliation against Staff Member A.

¹⁰³ See *id.* at *100-03 (evidence supervising official’s reputation had been seriously damaged by whistleblower supported finding supervising official had a “significant motive and desire to retaliate”).

¹⁰⁴ See *Santella*, 65 M.S.P.R. at 458-59 & n.3 (“Reprisal may be a significant factor in an action even if it is less important than another factor or factors. All that is needed to meet the ‘significant factor’ test is a showing that nonretaliatory motives would not have been sufficient, in the absence of the retaliatory motive, to cause the action to occur.”).

¹⁰⁵ See, e.g., *Special Counsel v. Dep’t of the Navy*, 46 M.S.P.R. 274, 280 (M.S.P.B. 1990) (“[W]e find that the protections provided in the [WPA] apply where a retaliatory personnel action is taken against an employee believed to have engaged in protected activity even though the employee may not have actually done so.”).

In light of the findings contained in this report, the OIG recommends the following:

1. The Department should consider taking appropriate administrative action with respect to Senior Official in light of the conduct discussed in this report.
2. The office that issued government-owned computer devices to Senior Official should evaluate and make appropriate changes to its policies concerning requests for government-owned equipment to be used at home, as well as evaluate its personal property record-keeping to ensure it complies with Department policies and procedures.
3. The Sponsoring Division should evaluate and make appropriate changes to its policies and practices concerning its organization of conferences to ensure they sufficiently protect against any appearance of impropriety that may arise with respect to expenditure of government funds to support such conferences. Additionally, the Sponsoring Division should provide training regarding the FTR and Department travel policies to all staff responsible for arranging, requesting, and approving travel requests in connection with its programs, as well as ensure that all Department employees traveling in connection with its programs receive similar training.
4. The Department should consider issuing formal guidance regarding application of the 14-Hour Rule in circumstances when a traveler takes leave at a layover location.

Appendix A: Detailed Timeline of Senior Official's Home-Use of IT Resources

Barcode #	Description	Manufacturer	Model Number	Start Date	End Date
██████████	COMPUTER, DESKTOP	DELL INC.	OPTIPLEX 745	Pre-9/29/2011	4/29/2014
██████████	COMPUTER, DESKTOP	DELL INC.	OPTIPLEX 780	12/5/2013	11/6/2014
██████████	COMPUTER, DESKTOP	DELL INC.	OPTIPLEX 755	9/27/2013	12/3/2013
██████████	COMPUTER, LAPTOP	SONY	VAIO VGN-TXN29NL	5/15/2013	4/28/2014
██████████	COMPUTER, LAPTOP	SONY	VAIO PCG-4C1L	1/23/2013	4/28/2014
██████████	COMPUTER, LAPTOP	DELL	LATITUDE E6330	4/5/2013	11/6/2014
██████████	COMPUTER, LAPTOP, TABLET	APPLE	IPAD 2 A1396	2/20/2013	4/28/2014
██████████	COMPUTER, LAPTOP, TABLET	APPLE	IPAD 2 A1395	5/4/2013	4/4/2014
██████████	COMPUTER, LAPTOP, TABLET	APPLE	IPAD AIR A1475	4/4/2014	11/6/2014