

# Report of Investigation: Katherine A. Lemos, Former Chairperson and Chief Executive Officer, U.S. Chemical Safety and Hazard Investigation Board

June 28, 2023 | Report No. 23-N-0020



## REPORT OF INVESTIGATION

KATHERINE A. LEMOS  
FORMER CHAIRPERSON AND CHIEF EXECUTIVE OFFICER  
U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Introduction and Summary

On May 11, 2021, the U.S. Environmental Protection Agency Office of Inspector General, Administrative Investigations Directorate initiated an investigation into potentially improper expenditures made by Dr. Katherine A. Lemos. At the time, Dr. Lemos was the chairperson of the U.S. Chemical Safety and Hazard Investigation Board, or CSB. Dr. Lemos resigned from her position as CSB chairperson and board member on July 22, 2022. The purpose of the investigation was to determine whether Dr. Lemos (1) improperly used Board funds for travel from her residence in San Diego to her official duty station in Washington, D.C.; (2) exceeded the statutory cap on expenses for her office refurbishment; and (3) hired two senior aides on a noncompetitive basis.

The OIG later expanded the scope of the investigation to include additional expenses related to Dr. Lemos's travel. These expenses included a trip to Washington, D.C., to attend a White House holiday reception during a continuing resolution, or CR; travel to Norfolk, Virginia, to participate in an embarkation on a U.S. Navy aircraft carrier; and trips to Atlanta and Houston for which expenses were calculated based on departures from a location other than Dr. Lemos's official duty station. The OIG also investigated whether Dr. Lemos improperly used Board funds for media training in 2020 and 2021.

As explained in this report, the evidence uncovered during our investigation has substantiated the following:

- Dr. Lemos's use of Board funds to travel from her residence in San Diego to her official duty station in Washington, D.C., constituted a violation of the Federal Travel Regulation, or FTR.
- Dr. Lemos's use of Board funds for the trip to Norfolk violated the FTR because the embarkation on the Navy aircraft carrier was not official CSB business.
- The expenses for Dr. Lemos's travel to Atlanta and Houston were improperly calculated based on departures from her residence in San Diego rather than her official duty station in Washington, D.C., as required by the FTR.
- Dr. Lemos exceeded the statutory cap on expenses to furnish and redecorate her office without prior notification to Congress. Her furniture purchases were also in violation of the Federal Management Regulation.

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- Dr. Lemos’s use of Board funds for her own media training without prior approval from the U.S. Office of Personnel Management, or OPM, was in violation of the Government Employees Training Act, or GETA, and OPM regulations.

Our investigation did not substantiate any allegation of wrongdoing related to the noncompetitive hiring of two senior aides, or the allegation that Dr. Lemos’s travel during the CR violated restrictions associated with the CR that was in place at the time. As noted in this report, Dr. Lemos’s testimony to the OIG included several statements regarding her travel and office purchases that were directly contradicted by other evidence.

On June 5, 2023, we provided Dr. Lemos, through her counsel, with a tentative conclusions letter containing our preliminary report of investigation and gave her an opportunity to review and comment before we finalized our report. We requested Dr. Lemos’s response by June 15, 2023.<sup>1</sup> In her response provided through her counsel, Dr. Lemos disagreed with our conclusions. Dr. Lemos asserted that she relied on the advice of CSB staff regarding the expense reimbursements at issue. She stated that CSB staff had difficulty obtaining clear guidance from the Office of Presidential Personnel and the OPM on her travel expenses. Dr. Lemos also asserted that the OIG did not acknowledge that she was invited to the embarkation in Norfolk in her CSB capacity and that other CSB employees participated in her media training. Finally, Dr. Lemos stated that the OIG did not give credit to testimony that her furniture purchases were made after consulting with senior staff and her “priority to ensure a safe workplace during the Covid-19 environment for current and incoming board members and staff.”

After carefully considering Dr. Lemos’s response, we amended some sections of the report but did not alter our original conclusions.<sup>2</sup>

This report summarizes the evidence uncovered during the OIG’s investigation.

## Methodology

During our investigation, we conducted 18 interviews of current and former CSB employees, including Dr. Lemos, as well as several individuals not affiliated with the CSB.

We also reviewed the email communications of relevant CSB personnel, as well as personnel records, purchasing files, and Dr. Lemos’s travel documents. In addition, we collected and reviewed relevant documents from outside parties, including the furniture dealer involved in the furniture purchases. We also conducted site visits to the CSB’s Washington, D.C., headquarters.

<sup>1</sup> On June 12, 2023, Dr. Lemos’s counsel requested a two-week extension to respond, but did not provide a justification for why additional time was needed. The OIG denied her request.

<sup>2</sup> While we included what we believe is a reasonable synopsis of Dr. Lemos’s responses, we provided a copy of the full response with this report.

## Chapter 1: Dr. Lemos's Use of Board Funds for Travel Between Her Residence and Official Duty Station

Dr. Lemos was not entitled to use government funds to pay for her travel between her residence in San Diego and her official duty station in Washington, D.C. From the start of her term on April 23, 2020, through the effective date of her change in duty station, which was March 27, 2022, Dr. Lemos traveled to Washington 18 times, at a total cost to the Board of \$49,668.46, in violation of the FTR. After changing her duty station to San Diego, Dr. Lemos traveled to Washington two more times, for an additional expense of \$5,163.54. Because federal law and regulations do not contain clear guidance related to changing the duty stations of federal agency heads, we were not able to conclude definitively that the expenses for the two trips were reimbursable under the FTR.

### A. Legal Standards

Appropriated funds are available only for the purpose or purposes for which Congress has provided. 31 U.S.C. § 1301(a); *United States v. MacCollom*, 426 U.S. 317, 321 (1976) (“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”). “[A]ppropriated funds are generally not available for the personal expenses of an employee without specific statutory authority.” *In re U.S. Int’l Trade Comm’n – Use of Appropriated Funds to Subsidize Employee Parking Permits*, B-322337, at 4 (Aug. 3, 2012).

Under federal law, a federal employee is entitled to payment of travel expenses incurred “when traveling on official business away from the employee’s designated post of duty.” 5 U.S.C. § 5702(a)(1). An agency may reimburse an employee for such expenses only if the employee is performing official travel,<sup>3</sup> which is defined in the FTR as: “[t]ravel under an official travel authorization from an employee’s official station or other authorized point of departure to a temporary duty location and return from a temporary duty location, between two temporary duty locations, or relocation at the direction of a Federal agency.” 41 C.F.R. § 300-3.1.

There is no provision in the FTR that allows employees to travel between their residence and permanent duty station at the government’s expense. As the comptroller general has stated, any travel to an official duty station is at the employee’s expense: “It is well-established that an employee’s commute between home and work is a personal expense, and personal expenses are not payable from appropriated funds, absent specific statutory authority.” *Matter of: U.S. Capitol Police – Employee Shuttle*, B-305864, at 2 (Jan. 5, 2006). “An employee chooses where to live and, in doing so, accepts the distance between the employee’s home and official duty station.” *In re Dep’t of Hous. And Urban Dev., Off. Of Inspector Gen. – Reasonable Accommodation*, B-318229, at 4 (Dec. 22, 2009); *see also Corrigan v. United States*, 694 F. App’x. 798, 802 (Fed. Cir. 2017) (holding that federal employee not entitled to reimbursement of expenses for travel

<sup>3</sup> 5 U.S.C. §§ 5702, 5707; 41 C.F.R. § 300-3.1.

between residence and official duty station); *see also Unavailability of Appropriated Funds to Subsidize Employees' Long-Distance Home-to-Work Travel*, B-330935, at 6 (May 20, 2019) (stating that appropriated funds may not be used for long-distance home-to-work travel costs, which is a personal expense of the employee), *reconsidered on other grounds*, B-330935.2 (determining that, in 5 U.S.C. § 7905, Congress authorized agencies to use appropriated funds to subsidize certain transit passes for employees).

The definition of official travel includes “relocation at the direction of a Federal agency.” 41 C.F.R. § 300-3.1. The FTR and CSB’s Board Order 6 (“Travel and Transportation Expenses of New Appointees”) permit the payment of specific relocation expenses, which are limited to transportation of the employee and immediate family members to the new permanent duty station, a per diem for the employee, and the transportation and storage of household goods. 41 C.F.R. § 302-3.2; CSB Board Order 6, § 4(h). Any expenses that are not listed in 41 C.F.R. § 302-3.2 are not reimbursable by federal agencies as relocation expenses. *See* 41 C.F.R. § 302-3.3; CSB Board Order 6, § 4(i).

The employee must complete all aspects of the relocation within one year of the effective date of the appointment. 41 C.F.R. § 302-2.9. The effective date of the appointment is the date on which the employee “report[s] for duty” at his or her official duty station. 41 C.F.R. § 302-2.4. There is no provision in the FTR that permits reimbursable travel to the employee’s duty station prior to the employee’s relocation.

As a result of the presidential national emergency proclamation issued March 13, 2020, concerning the coronavirus pandemic—that is, the SARS-CoV-2 virus and resultant COVID-19 disease—the U.S. General Services Administration, or GSA, issued guidance allowing federal agencies to waive the relocation time limit established by the FTR for cases where coronavirus pandemic restrictions “create[d] difficulties for individuals attempting to complete their relocation within one year.” The GSA guidance does not address whether travel to an employee’s permanent duty station is reimbursable prior to the employee’s relocation. As of the date of Dr. Lemos’s resignation, the GSA had not issued guidance permitting reimbursement for such travel during the coronavirus pandemic.

## **B. Facts**

The CSB is an independent federal agency headquartered in Washington, D.C. The Board is charged with investigating industrial chemical accidents. The CSB was authorized by the Clean Air Act Amendments of 1990, 42 U.S.C. § 7412(r)(6), and became operational in January 1998. Its principal role is to investigate accidents and determine their causes in order to prevent similar events. The CSB is composed of five board members, including the chairperson, who are appointed by the president and confirmed by the Senate. The Board chairperson serves as the chief executive officer and is responsible for Board administration. CSB Board Order 28, § 8.

Katherine Lemos was confirmed by the Senate as the CSB chairperson on March 23, 2020, and began her term on April 23, 2020. Prior to her confirmation, Dr. Lemos served as a Director for

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Northrop Grumman Corporation's Aerospace Sector. And prior to that, Dr. Lemos served in various roles in the federal government, including at the Federal Aviation Administration and the National Transportation Safety Board. In her testimony to the OIG, Dr. Lemos confirmed that she engaged in work-related travel when she worked at the Federal Aviation Administration and National Transportation Safety Board.

Dr. Lemos was the sole board member at the CSB from May 1, 2020, when the only other member left the board, until February 3, 2022, when two new board members were sworn in and began their terms. Dr. Lemos resigned from her positions as chairperson and board member effective July 22, 2022.

At the start of her term, Dr. Lemos's official duty station was Washington, D.C., but she resided in San Diego. At that time, the CSB office was closed because of the coronavirus pandemic, and the staff was working remotely. Dr. Lemos did not relocate to Washington, D.C.; instead, she worked from her San Diego residence. According to Dr. Lemos, she traveled to Washington whenever she felt a need to do so. Between April 26, 2020, and her departure from the Board on July 22, 2022, Dr. Lemos traveled to Washington, D.C., twenty times, for a total expenditure of \$54,832.00, as summarized in Table 1 below.

**Table 1: Dr. Lemos's Round-Trip Travel Expenses from San Diego to Washington, D.C. (April 26, 2020–July 22, 2022)**

No.	Trip Dates	Expenses
1	April 26–May 1, 2020	\$2,977.61
—	June 1–5, 2020	\$60.61*
2	June 22–26, 2020	\$3,711.96 <sup>†</sup>
3	July 12–17, 2020	\$2,475.41
4	July 26–August 1, 2020	\$2,663.88
5	August 30–September 4, 2020	\$2,574.90
6	October 5–9, 2020	\$2,516.59
7	October 19–23, 2020	\$2,444.93
8	October 28–November 6, 2020	\$3,938.96 <sup>‡</sup>
9	November 30–December 4, 2020	\$2,000
10	January 10–15, 2021	\$2,384.04
11	June 13–17, 2021	\$2,956.32
12	August 8–13, 2021	\$2,889.20 <sup>§</sup>
13	September 26–30, 2021	\$2,757.38
14	October 31–November 6, 2021	\$2,730.43
15	November 29–December 3, 2021	\$2,317.68
16	December 13–21, 2021	\$3,589.29
17	January 23–28, 2022	\$2,499.50
18	February 14–18, 2022	\$2,179.77
19	May 30–June 4, 2022	\$2,596.64
20	July 11–16, 2022	\$2,566.90
	<b>Total</b>	<b>\$54,832.00</b>

\* This trip was booked and then canceled. Expense amount represents nonrefundable fees.

<sup>†</sup> This figure includes expenses for travel from Washington, D.C., to Denver, Colorado, on Friday, June 26, 2020. The Washington-to-Denver leg of the trip originated from Dr. Lemos's official duty station of Washington, D.C., and the evidence uncovered by the OIG suggests that it was for the purpose of official CSB business. As such, the expenses for this specific leg of the trip do not constitute a violation of the FTR. The OIG was not able to determine what portion of the lump-sum airfare was attributable to the Washington-to-Denver leg of Dr. Lemos's flight.

<sup>‡</sup> This figure excludes expenses for two day trips departing from Washington, D.C., on November 2 and 3, 2020. The evidence suggests that the trips were for official CSB business. Because the trips originated from Washington, D.C., they do not constitute a violation of the FTR and expenses for the two trips have been deducted from the figure above.

<sup>§</sup> This figure includes expenses for a trip from Washington, D.C., to Norfolk, Virginia (discussed below at Chapter 2(A)).

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Dr. Lemos told the OIG that she believed her travel to Washington was permitted based on a conversation with a CSB staff member prior to joining the Board. According to Dr. Lemos's testimony, in December 2019 the CSB's [REDACTED] told her that it was customary for the Board to cover an incoming chairperson's travel until the person was settled in Washington. The only limit to such travel was that it should be reasonable. The [REDACTED] did not recall such a conversation, and Dr. Lemos was not able to point to any provision of the FTR that supported the [REDACTED] alleged statement. Dr. Lemos conceded in her interview with the OIG that the individual traveler is responsible for complying with the FTR.

None of the CSB staff members we interviewed testified that they had informed Dr. Lemos that her travel was improper under the FTR, and we found no written evidence that anyone had ever done so. At various times in 2020 and early 2021, CSB staff members raised concerns with each other about Dr. Lemos's travel, but their assumption was that the travel was permissible until Dr. Lemos relocated. For example, in October and November 2020, CSB staff members communicated with the Bureau of the Fiscal Service travel desk regarding Dr. Lemos's relocation and the date when the one-year period for her relocation benefits would begin and end. As a result of these communications, CSB staff confirmed that the one-year period started running on April 23, 2020, and that Dr. Lemos would need to complete her relocation by April 23, 2021. The staff assumed that, prior to the relocation, Dr. Lemos could use Board funds to travel to her duty station. One staff member informed Dr. Lemos in October 2020 and again in January 2021 that her "report date" was April 23, 2021, and that any travel to Washington, D.C., after that date could not be reimbursed by the CSB. The OIG did not uncover any evidence that CSB staff informed Dr. Lemos that her travel to Washington, D.C., was not an allowable expense prior to her relocation. As one staff member told the OIG, "the only thing I can say is we just didn't ask the right questions." According to Dr. Lemos's testimony to the OIG, she relied on advice from her staff and never questioned the advice or sought confirmation that it was correct.

In May 2021, the advocacy group Public Employees for Environmental Responsibility, or PEER, issued a press release alleging that Dr. Lemos's trips to Washington, D.C., were in violation of federal rules governing employee travel. Dr. Lemos testified to the OIG that she did not "believe their statement." According to Dr. Lemos, her staff told her that it was "half-truths ... as usual." Dr. Lemos's travel documents show that, after the PEER press release, she continued to travel at almost the same rate as she had in 2020.

In October 2021, during the OIG's investigation, the CSB staff sought clarification from the Bureau of the Fiscal Service about whether the Board could continue to pay for Dr. Lemos's travel, and the Bureau of the Fiscal Service forwarded the CSB's questions to the GSA team responsible for interpreting the FTR. The GSA's email responses stated repeatedly that the FTR does not authorize any travel allowance at the employee's official duty station.



**Table 2: GSA Responses to Questions Regarding Dr. Lemos’s Travel**

Question	GSA Response
“The question they are asking is which part of the FTR allows them to pay travel from the residence in CA [California] to the PDS [Permanent Duty Station] in DC.”	“There is <b>no FTR authority to allow TDY [Temporary Duty] travel allowances at the PDS.</b> ” <sup>†</sup>
“Since the traveler has not yet been told to officially report to DC, any travel during this time from CA to DC can be reimbursed by the agency?”	“Again, it appears the agency has made the DC area as the PDS, and <b>the FTR only authorizes TDY allowances when the employee is away from the PDS and not at the PDS.</b> ” <sup>†</sup>
“The traveler is full-time teleworking in CA due to COVID, but as we know if the PDS on the SF-50 is DC it does not change for COVID. The telework agreement will not be 100% (PDS=DC) and the traveler is required to come into the office during the pay period.”	“Not sure about ‘HR telework policy and allowing an employee to work away from the PDS and not change because of COVID. However, again, <b>the FTR doe[s] not authorize TDY allowances at the PDS.</b> ” <sup>†</sup>

<sup>†</sup> Emphasis added.

At the end of the GSA’s email response, in a section with the heading “Bottom Line” in bold, it provided another succinct statement of the governing law and regulations:

**Bottom Line:**

If the agency has established the PDS, and the individual resides in a different location that is not the PDS, the agency can not pay TDY expenses to travel to the PDS. This applies to “ALL” new appointees, current employees, and political Secretary/appointees.

The GSA email was provided to CSB staff members in October 2021, and it was forwarded to Dr. Lemos on December 8, 2021.

A representative from the GSA testified that he reiterated the same points to the CSB’s executive counsel in a telephone conference on December 17, 2021. In an interview with the OIG, the GSA representative said that he explained to the executive counsel, “if you’re away from your PDS [permanent duty station] and you’re traveling back to your PDS, there is no travel entitlement.”

The GSA representative testified that there was no contradiction between the advice he provided on the call and the advice provided by GSA in the emails.<sup>4</sup>

After the call, the executive counsel advised Dr. Lemos, contrary to the statements in the GSA email, that the GSA “understands our position and could not point to any guidance to suggest [that the] current position of the agency is improper.” Between December 8, 2021, and March 1, 2022, Dr. Lemos traveled to Washington three more times: on December 13, 2021; January 23, 2022; and February 14, 2022.

On March 27, 2022, Dr. Lemos changed her official duty station from Washington, D.C., to San Diego. According to a letter from her personal legal counsel dated April 19, Dr. Lemos made this change based on the OIG’s investigation: “Dr. Lemos wanted to eliminate any further uncertainty regarding her travel expenses.” Other documents uncovered by the OIG suggest that this change was made without approval from the Office of Presidential Personnel, which is the normal practice for changing the duty station of other types of political appointees, such as Schedule C appointees.<sup>5</sup> On March 8 and 14, the CSB’s ██████████ sought guidance from the Board’s liaison in the Office of Presidential Personnel, but there is no evidence in the record that the Office of Presidential Personnel responded or provided any guidance.

In a memorandum to the CSB’s ██████████ dated March 21, 2022, Dr. Lemos requested the change in her duty station and asked that the change be effective March 27. She also stated that the document “serves as written documentation of my decision and request, per the direction of Human Resources.” Dr. Lemos did not provide any reason for the request or explain how the change would be in the best interests of the Board, as would be required for changing the duty station of other CSB personnel. CSB Board Order 42, § 9(b)(2).

On March 22, 2022, the CSB’s ██████████ informed Dr. Lemos that she was “strongly against the decision to move this action forward without written approval from the White House.” The request was submitted to the Department of the Interior’s Interior Business Center and the change was made effective as of March 27, in accordance with Dr. Lemos’s

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<sup>4</sup> The executive counsel had a different view of what took place on the call with the GSA. In his interview with the OIG, the executive counsel testified that the rules cited in the GSA’s email were based on a “different set of facts” because Dr. Lemos had not yet reported to her official duty station. He went on to say, “if the employee shows up to work on a permanent duty station, [he or she] would no longer be entitled to travel to the permanent duty station from a remote location. That’s not in dispute. That’s not in dispute at all.” He said that, in Dr. Lemos’s case, “She did not report in to her permanent duty station.” When asked to provide the legal authority supporting his statement, the executive counsel was not able to provide any; he stated that his understanding was based on his conversation with the GSA representatives. The executive counsel also testified that the advice given by the GSA in the telephone conference contradicted the advice provided by GSA in the emails. The executive counsel said that he “expressly asked [them] about it. And they agreed. They think [it’s] a gray area.” Taking into account all the evidence and testimony, the OIG finds the GSA representative’s account of the call to be credible.

<sup>5</sup> An OPM representative advised the OIG that although there was no statutory or regulatory requirement for the request to be approved by the Office of Presidential Personnel, OPM’s practice has been to require OPM and the Office of Presidential Personnel approval for a change in duty station of Schedule C appointees.

request. Dr. Lemos subsequently traveled to Washington on May 30 and July 11, at a total cost to the Board of \$5,163.54.

The OIG asked the CSB and Dr. Lemos to produce all documentation related to Dr. Lemos's request to change her duty station. In response, the CSB produced the March 21, 2022 memorandum, which did not provide any reason for the request or explanation of the anticipated benefits for the Board. The CSB also produced an internal email sent by the CSB's executive counsel to the CSB's [REDACTED] and [REDACTED] on March 3, 2022. In the email, the executive counsel directed the recipients to "move forward with [the] updating of the Chairman's designated PDS to reflect her home office in San Diego," and provided a draft justification narrative for the change. The justification included a reference that the change would align the chairperson with other board members and mission staff who worked remotely and provide "a cost savings" as the agency would no longer have to provide relocation benefits to Dr. Lemos. The only other reasons for the request that we have been able to uncover were stated in the April 19 letter to the OIG from Dr. Lemos's personal legal counsel, which cited "the OIG investigation," the "lack of clear guidance from GSA," and a desire to "eliminate any further uncertainty regarding her travel expenses." None of these justifications describe how the change would be in the best interests of the Board.

### **C. Analysis**

#### 1. Dr. Lemos's Use of Board Funds to Travel to her Official Duty Station Violated the FTR.

Dr. Lemos was not entitled to use government funds to pay for her travel between her residence in San Diego and her official duty station in Washington, D.C. There is no basis for such expenditures in the U.S. Code, the FTR, the CSB's Board Orders, or any other statutory or regulatory authority that the OIG has been able to identify.

Under federal law, Dr. Lemos was only entitled to the payment of travel expenses for "official business" that was "away from [her] designated post of duty." 5 U.S.C. § 5702. Dr. Lemos was not in San Diego for official agency business, and her stays in Washington, D.C., were not "away from [her] designated post of duty," as the law specifies. Washington, D.C., was her official duty post. Under the FTR, a government employee is entitled to travel expenses only when on "official travel," 41 C.F.R. § 301-10.1, which is defined as: travel from an employee's official station or other authorized point of departure to a temporary duty location and return from a temporary duty location, travel between two temporary duty locations, or relocation at the direction of a Federal agency, 41 C.F.R. § 300-3.1. Because Washington, D.C., was Dr. Lemos's permanent duty location—not her temporary duty location—she was not entitled to the payment of travel expenses for her stays there or for her travel between there and her residence in San Diego.

Dr. Lemos's decision to reside in San Diego, more than 2,000 miles from her duty station, was her personal choice, and her travel between San Diego and Washington, D.C., was a personal

expense. *See* B-330935, at 6-7. There was no statutory authority from Congress for Dr. Lemos to use appropriated funds for her travel to and from her official duty station. Accordingly, Dr. Lemos's use of \$49,668.46 in Board funds for the 18 trips she took from San Diego to Washington, D.C., between April 2020 and March 2022 was in violation of the FTR.

2. The OIG Could Not Determine Whether Expenses for Dr. Lemos's Two Trips to Washington, D.C., Following Her Duty Station Change Were Allowable Under the FTR.

After changing her duty station, Dr. Lemos traveled to Washington two more times. We were not able to conclude whether her use of Board funds for those trips was permissible under the FTR, however, because we were not able to determine definitively whether Dr. Lemos had a proper legal basis for changing her duty station.

The OIG was not able to identify any legal authority permitting a presidentially appointed, Senate-confirmed agency head to request a voluntary change in duty station. There is no OPM regulation setting forth requirements for such requests. OPM has advised the OIG that its general practice has been to require OPM and the Office of Presidential Personnel approval for such requests by political appointees, but the OIG could not locate any formal written guidance from OPM on this practice. The CSB's Board Order 42, "Internal Transfer, Reassignment, and Change in Duty Station," sets forth procedures that must be followed in changing the duty station of CSB employees; it does not include procedures for changing the duty station of the chairperson. CSB Board Order 42 § 9. In the absence of such procedures, it is unclear whether a change in the chairperson's duty station would be permitted. Even though Board Order 42 does not explicitly apply to the chairperson, we find it instructive to analyze Dr. Lemos's duty station change in light of Board Order 42's requirements.

Under Board Order 42, the duty station of CSB employees is Washington, D.C., and any changes in an employee's duty station must be based on the best interests of the Board. Board Order 42, § 9(a), (b)(2). In making a request for a change in duty station, an employee must set forth in writing "the reasons for the request, and the anticipated benefits to be derived by the CSB if the change were approved." *Id.* at § 9(b)(2). The employee's supervisor, the office director, and the Human Resources Department must provide their views on the request to the chairperson, including whether approval of the request would be in the best interests of the CSB. *Id.* The chairperson must consider their views and the views of the board. *Id.* Although the chairperson has sole discretion to grant or deny such requests, any decision is to be based on the "best interests of the CSB." *Id.*

None of the documents that Dr. Lemos and her personal legal counsel provided to the OIG contained an analysis of whether the duty station change would be in the best interests of the Board. The memorandum that Dr. Lemos submitted on March 21, 2022, did not provide her reasons for the requested change in duty station or an explanation of how it would benefit the Board. The April 19 letter from Dr. Lemos's personal legal counsel cited "the OIG investigation," the "lack of clear guidance from GSA," and a desire to "eliminate any further

uncertainty regarding her travel expenses” as the reasoning for the change, none of which describes any anticipated benefits to the Board.

The draft narrative justification sent by the executive counsel to the CSB’s [REDACTED] on March 3, 2022, stated that the change would align the chairperson with mission staff and other board members who were working remotely and allow for “a cost savings” by eliminating relocation benefits for the chairperson. It is unclear whether this draft narrative factored into Dr. Lemos’s decision to change her duty station as she was not copied on the executive counsel’s email, and none of the justifications cited in the executive counsel’s draft were referenced in Dr. Lemos’s March 21 memorandum request or in her legal counsel’s April 19, 2022 letter to the OIG. The CSB also did not produce any supporting documentation showing a cost savings calculation relating to the change in duty station.

When an employee requests a duty station change, Board Order 42 requires the chairperson to consider the views of the employee’s supervisor, the office director, and the Human Resources Department, as well as the views of the board. Dr. Lemos did not have a supervisor, and the CSB’s [REDACTED] indicated her approval by signing Dr. Lemos’s March 21 request. The [REDACTED] expressed a contrary view, however, objecting to the request in the absence of written approval from the White House. There was no evidence that the CSB board members were consulted.

Given that Dr. Lemos did not provide the reasons for the request or explain how the change would be in the best interests of the Board, her request would not have satisfied the requirements in CSB Board Order 42. The evidence also indicates that the CSB did not obtain OPM or Office of Presidential Personnel approval before processing the request. As explained above, however, Board Order 42 does not explicitly apply to the chairperson and in the absence of formal written guidance or regulations, it is unclear whether the OPM general practice was applicable. As such, the OIG could not conclusively determine whether Dr. Lemos’s change of duty station was proper or whether her use of \$5,163.54 in Board funds for trips to Washington in May and July 2022 was permissible under the FTR.

### 3. The Letter from Dr. Lemos’s Legal Counsel Does Not Provide a Legal Basis for Her Travel.

In a letter to the OIG from her personal legal counsel dated February 10, 2022, Dr. Lemos presented various arguments for why she believed the travel to Washington, D.C., was a permissible Board expense, but none of the arguments show that Dr. Lemos had a basis in the controlling statutes or regulations to use government funds for her travel. Dr. Lemos’s arguments fell into three general categories: (1) The FTR did not track the unique set of circumstances presented by the coronavirus pandemic; (2) CSB personnel did not suggest that there was a problem with her travel and instead told her that the travel was allowable until she was able to relocate to Washington, D.C.; and (3) the advice the CSB received from the GSA was confusing

but seemed to say that Dr. Lemos's travel was permissible. This section analyzes each of these arguments.

***(1) The FTR did not track the unique set of circumstances presented by the coronavirus pandemic.***

As explained above, the FTR sets forth three categories of travel that constitute "official travel," and they are the only types of travel that are reimbursable to an employee under federal law. Travel back and forth to an official duty station is not included in the definition of "official travel." 41 C.F.R. § 300-3.1. There is no provision of federal law or regulation that created a general suspension or loosening of 5 U.S.C. § 5702 or the FTR during the coronavirus pandemic. The FTR does not include provisions that specifically address travel during pandemics, which means that its provisions remain unchanged during a pandemic.

***(2) CSB personnel did not suggest that there was a problem with Dr. Lemos's travel and instead told her that the travel was allowable until she was able to relocate.***

Key CSB staff members were operating under the mistaken belief that an incoming chairperson was entitled to travel to Washington, D.C., at the government's expense prior to the chairperson's relocation. *See supra* p. 7. None of the staff members interviewed by the OIG testified to bringing concerns about the travel to Dr. Lemos's attention.

According to Dr. Lemos's testimony to the OIG, she relied on advice from her staff and never questioned the advice or sought confirmation that it was correct, even after the PEER press release of May 11, 2021, alleged that she was in violation of the federal travel rules. Regardless of what advice an employee receives, an agency may not pay an employee's travel expenses in violation of the relevant statutes and regulations—even if the advice was erroneous and the employee relies on it to his or her detriment. *See In re Joseph E. Copple*, GSBICA No. 16849-RELO (June 12, 2006). As Dr. Lemos conceded in an interview with the OIG, the individual traveler is responsible for complying with the FTR.

Dr. Lemos appeared to be operating under a mistaken understanding of the FTR, even through February 10, 2022, the date of her letter to the OIG. In that letter, she referred to a "reimbursable travel period" during which she was allegedly authorized to use government funds for travel to Washington, D.C., until her relocation was complete. She provided no support in the laws or regulations for this "reimbursable travel period," however. There simply is no "reimbursable travel period" in federal law or regulations or in the CSB's own written policies.

***(3) The advice received from GSA regarding the travel was confusing and hard to follow, but Dr. Lemos understood the advice to mean that her travel was permissible.***

In October 2021, the CSB sought clarification about whether the Board could continue to pay for Dr. Lemos's travel, but according to the letter from Dr. Lemos's counsel, it never received "a clear answer" to the question. The letter stated that there was "confusion among individuals at the GSA, Department of Treasury, and CSB about what Dr. Lemos' travel and relocation benefits were."

Despite the letter's assertion about confusion, the GSA's advice was clear and definitive: the FTR does not authorize any travel allowance at the employee's official duty station. This rule was repeated several times in the GSA email:

- "There is no FTR authority to allow TDY travel allowances at the PDS."
- "Again, it appears the agency has made the DC area as the PDS, and the FTR only authorizes TDY allowances when the employee is away from the PDS and not at the PDS."
- "However, again, the FTR doe[s] not authorize TDY allowances at the PDS."
- "**Bottom Line:** If the agency has established the PDS, and the individual resides in a different location that is not the PDS, the agency can not pay TDY expenses to travel to the PDS. This applies to 'ALL' new appointees, current employees, and political Secretary/appointees."

In the face of such definitive advice from the GSA, Dr. Lemos's assertions about confusion are not a credible reason for her own misunderstanding of the rules.<sup>6</sup>

#### ***D. Conclusion***

The OIG substantiated the allegations regarding Dr. Lemos's travel from San Diego to her official duty station in Washington, D.C. Dr. Lemos used \$49,668.46 in Board funds for her personal travel to Washington, D.C., in violation of the FTR. The OIG was not able to determine whether Dr. Lemos's March 2022 change of duty station from Washington, D.C., to San Diego was proper and whether her use of \$5,163.54 in Board funds to pay for her trips to Washington in May and July 2022 was permissible under the FTR. The letter from Dr. Lemos's personal legal counsel provided no basis in the FTR, the federal statutes, or the CSB's own board orders for using CSB funds for her personal travel.

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<sup>6</sup> In her February 10 letter, Dr. Lemos also stated that "GSA OGC [Office of General Counsel] is apparently working on guidance on these issues but CSB does not know when that guidance will be complete." According to the GSA representative interviewed by the OIG for this investigation, the guidance was submitted to and approved by the GSA OGC prior to Dr. Lemos's letter. The guidance, which is consistent with all the other guidance provided to the CSB by the GSA, states in relevant part: "Can agencies authorize individuals to travel from the telework location and also receive per diem at the PDS? No, the employee can only receive per diem when away from the PDS or other area defined by the agency."

## Chapter 2: Other Travel-Related Issues

During the course of our investigation into Dr. Lemos's travel to her official duty station, the OIG learned of other potential problems with her travel. The investigation determined that Dr. Lemos used Board funds to travel from Washington, D.C., to Norfolk, Virginia, to participate in an embarkation on a U.S. Navy aircraft carrier, an event that was not official CSB business. She also traveled to Atlanta and Houston, improperly charging the Board for the cost of the airfare from her residence in San Diego, rather than from Washington, D.C. The OIG did not substantiate the allegation that Dr. Lemos's trip to Washington for a White House holiday reception violated restrictions associated with the CR that was in place at the time.

These issues are discussed below.

### A. Travel to Norfolk

#### 1. Legal Standards

As explained in Chapter 1, federal employees are entitled to receive travel expenses when traveling on official business away from their permanent duty station. 5 U.S.C. § 5702(a)(1); 41 C.F.R. § 301-1.3(a). In determining whether requested travel is for official business, it is not sufficient for the travel to be merely "related" to an employee's official duties. To be reimbursable, the travel must be "for the purpose of transacting or performing official business." See *In re Charles H. Byrd II – Travel and Leave for Tryouts for the United States Olympic Team*, B-235684 (Sep. 27, 1989); see also *U.S. Dep't. of Agric. v. Fed. Lab. Rels. Auth.*, 691 F.2d 1242, 1248 (8th Cir. 1982) (employees not entitled to reimbursement of expenses incurred in traveling for purposes of union contract negotiation because not official business of the agency); *In re Reaves*, GSBICA No. 16237-TRAV (Jan. 21, 2004) (employee not entitled to reimbursement of airfare for flight home to attend funeral of family member because purpose of trip was personal and not official business of the agency); *Matter of Harold A. Knapp – Temp. Duty Travel and Subsistence Expenses*, B-226863 (Jan. 26, 1989) (employee not entitled to per diem during temporary duty in Boston because purpose of trip was for employee's medical procedure, which was not official business of the agency).

The *Byrd* case provides an instructive example. In *Byrd*, a firearms instructor at the FBI Academy qualified for the U.S. Olympic shooting team tryouts and was approved for travel and lodging funds for his attendance at the trials. He and his supervisors stated that exposure to the other shooters and coaches, and to recent developments in technology and training techniques, would be related to his official duties and would improve his ability to perform those duties. The comptroller general held that Mr. Byrd was not entitled to travel funds, however: "travel to compete in Olympic tryouts cannot be characterized as travel for the purpose of transacting or performing official business within the meaning of the FTR. ... his travel was primarily his personal choice and for his personal benefit, despite the value which the FBI might gain from his participation in the tryouts." *Id.*

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## 2. Facts

On August 8, 2021, Dr. Lemos traveled to Norfolk, Virginia, at the CSB's expense, to take part in an embarkation on a U.S. Navy aircraft carrier.

The event was organized by a 501(c)(3) organization whose "purpose and mission" is "to provide financial assistance to" a Navy-sponsored command organization that conducts social, informational, care-taking, and morale-building activities for Navy family members. According to the organization's website, each time the ship returns from a deployment, the organization helps provide funding for a welcome home celebration for dependents and family members of the crew. As part of its outreach to the community, the organization hosts individuals on overnight visits to the vessel.

On July 27, 2021, Dr. Lemos was invited to join an upcoming embarkation. A few days later, she provided materials to the CSB Office of General Counsel for an ethics review of the event. Dr. Lemos's trip request stated that the embarkation was "designed to provide participants with an understanding of operational safety in high-risk operations, as executed by the Navy. ... Participants across industries will be introduced to how the Navy manages the broad range of safety risks in an environment that affords little opportunity for error. ... These topics directly align with the CSB's priorities, to include worker and environmental safety." The trip would include "organized discussions and interviews throughout the trip, as well as pre- and post-trip dinner discussions amongst safety leaders across industries."

A CSB ethics official reviewed the materials for potential ethics issues and responded with a concern that the trip was not related to the official business of the CSB, as required under the FTR:

According to the [organization's] website, the organization's purpose is essentially to pay for a "welcome home pier-side celebration for [the ship's] 15,000 plus dependents and family members" each time the ship returns home from a major deployment – a laudable purpose, to be sure, but not at all related to the business of the agency. Nor is the [organization] a training or process safety organization. Additionally, there is no indication on the organization's website that there are tours tailored to the process safety or emergency response community.

Frankly, on its face, this looks like a junket. It's heavy on the "fun" aspect (taking a plane and landing on the flight deck; getting underway with the sailors, etc.) and virtually silent on the "educational" aspect. I don't doubt that a lot can be learned about the [ship's] generators, propulsion systems, etc., and how those are safely managed at sea. Based on the facts and circumstances presented, however, the ship's operations are not sufficiently similar, or related to the civilian fixed facilities' industrial operations, to warrant the CSB paying for the proposed excursion.

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The ethics official requested additional information, including a list of attendees and an agenda showing the nature of any safety discussions or training planned for the event. On August 2, 2021, there was a call between Dr. Lemos, the CSB's executive counsel, and the ethics official to discuss the trip. The ethics official expressed her concerns and explained that it was an issue of appearance. According to the ethics official, nothing was resolved on the call, and Dr. Lemos never provided the requested information. The ethics official did not provide an ethics opinion to Dr. Lemos because she did not have an adequate factual basis for one. Dr. Lemos proceeded with the trip, however, and spent four days and three nights in Norfolk, including one night on the ship.<sup>7</sup> Expenses related to the travel from Washington, D.C., to Norfolk amounted to \$1,246.53.<sup>8</sup>

The OIG interviewed the ████████ of the organization, who testified that the embarkation did not have a formal educational component. Safety was a significant concern because aircraft carriers are hazardous environments, but the embarkation attended by Dr. Lemos had no special focus on safety themes. There were no formal presentations or discussions related to chemical safety. The OIG asked the organization to provide all documents and other materials related to the programs, lectures, and training sessions provided to visitors in connection with the embarkation. None of the materials provided by the organization referenced any sort of training or a focus on safety themes. According to the organization's ████████, the purpose of the embarkations is to give visitors an idea of how the military is operating, show them where their tax dollars are going, and give them an opportunity to talk to the sailors. The ████████ added that, after an embarkation, visitors are asked if they want to donate to the organization.

In her testimony to the OIG, Dr. Lemos described the purpose of the trip as "a safety education meeting and sharing meeting." She testified that she went on the aircraft carrier with "11 other safety professionals" and that the purpose was to "interact with other safety leaders, learning how they're doing business, to also learn from the Navy's method of leadership style in quickly bringing a team together which we needed to do and ... to really share our take-home lessons learned."

### 3. Analysis

Dr. Lemos's embarkation on the aircraft carrier was not official CSB business and her use of Board funds for the travel to Norfolk was a violation of the FTR. Like the travel in *Byrd*, Dr. Lemos's trip to Norfolk was not official Board business. When asked by the OIG about the purpose of the trip, Dr. Lemos explained:

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<sup>7</sup> The room rate at the hotel where Dr. Lemos stayed on August 8 and 10 was \$199 per night, which exceeded the government approved FY 2021 rate for lodging of \$96 per night. An agency may approve actual lodging costs of up to three times the approved rate in cases where, for example, lodging has been arranged in advance in connection with a conference or meeting. See 41 C.F.R. § 301-11.300(a); 301-11.303. Dr. Lemos obtained approval from the CSB's executive counsel to exceed the standard amount.

<sup>8</sup> This figure is included in the amounts listed in Table 1, and it does not include airfare from San Diego to Washington or other travel expenses Dr. Lemos incurred while on travel that week.

[I]t was to attend a safety education meeting and sharing meeting. ... I went on an aircraft carrier with ... 11 other safety professionals. ... The purpose was to interact with other safety leaders, learn how they are doing business, to also learn from the Navy's method of leadership style in quickly bringing a team together which we needed to do and ... to really share our take-home lessons learned.

When asked how the Navy's mission was relevant to the CSB's mission, which does not cover maritime accidents, Dr. Lemos testified:

[T]hey have all sorts of safety equipment which I have to learn how to use and — and we watched being timed. For example, ... several of our CSB accidents involve release of materials that requires people to don suits. And that training is incredible. So I learned — safety is cross-domain and at NTSB [National Transportation Safety Board] I learned that. CSB is cross-domain. We interact with FAA [Federal Aviation Administration]. We interact with [the U.S. Pipeline and Hazardous Materials Safety Administration], which is pipeline. It's chemicals. And it was also about leadership approaches. How to instill safety.

Even if the safety mission of the U.S. Navy overlapped with the safety mission of the CSB, Dr. Lemos's explanation does not explain how a visit to an aircraft carrier constituted official CSB business. The CSB ethics official who reviewed the trip request raised this concern in an email that was forwarded to Dr. Lemos on August 2, 2021. According to the ethics official:

[T]he organization's purpose is essentially to pay for a “welcome home pier-side celebration for [the ship's] 15,000 plus dependents and family members” each time the ship returns home from a major deployment — a laudable purpose, to be sure, but not at all related to the business of the agency.

Despite these concerns, Dr. Lemos still proceeded with the trip.

Moreover, we do not find Dr. Lemos's explanations of the trip, quoted previously, to be credible. The materials provided by the organization did not support Dr. Lemos's assertion that the trip was a “safety education meeting.” The [REDACTED] of the organization testified in his interview with the OIG that “safety” was not a special focus or theme of the event. There were also no formal discussions related to chemical safety or to transferring naval safety processes to civilian land-based industrial enterprises. The evidence uncovered by the OIG likewise provides no support for Dr. Lemos's testimony that the attendees on the embarkation included “eleven other safety leaders.” Based on the biographical material supplied by the organization, the other guests were identified as: a retired airline pilot, a solutions architect for a blockchain startup, three executives in the financial services industry, one lawyer, two presidents of small academic

institutions in Missouri and Kansas, two company presidents, and the mayor of a Missouri city. There is no evidence that these individuals were involved in the chemical industry or chemical safety.

Based on this evidence, the OIG determined that Dr. Lemos's trip to Norfolk was not for the purpose of transacting or performing official CSB business, and the use of government funds for the trip violated the FTR.

## ***B. Travel to Atlanta and Houston***

### 1. Legal Standards

The FTR requires that official travel originate at the employee's official duty station or temporary duty station, 41 C.F.R. § 300-3.1, and the traveler must take the "usually traveled route," 41 C.F.R. § 301-10.7. If for personal convenience the traveler goes by an indirect or different route, then the reimbursement will be limited to the cost of travel from the employee's duty station to the destination by the most direct route. 41 C.F.R. § 301-10.8. In such a case, the traveler is liable for any additional costs. *Id.* An agency will not pay excess costs resulting from taking a circuitous route. 41 C.F.R. § 301-2.4.

### 2. Facts

In 2021 and 2022, Dr. Lemos took two trips that involved potentially improper expense amounts because the trips originated from San Diego rather than Washington, D.C.<sup>9</sup>

On January 29, 2021, Dr. Lemos traveled from San Diego to Atlanta in connection with a CSB investigation of a fatal incident that occurred on January 28. According to her testimony, she flew from San Diego on Friday, January 29, gave a press briefing on Saturday afternoon, visited the processing plant the following day, met with the company's chief executive officer on Monday, and flew out the following day. The trip to Atlanta resulted in expenses of \$1,582.98.

On February 21, 2022, Dr. Lemos traveled from San Diego to Houston to participate in a community tour and to provide remarks at a conference hosted by a private law firm. The tour was scheduled as a two-hour event on February 23, and the law firm conference was a full-day event on February 24. Dr. Lemos returned to San Diego on February 25. The trip to Houston resulted in five days of travel expenses, for a total of \$1,747.52.

### 3. Analysis

Dr. Lemos's point of departure for these trips was San Diego, rather than Washington, D.C., and she was in San Diego for her own personal convenience. At the time of the trips, San Diego was

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<sup>9</sup> Dr. Lemos took another trip originating from San Diego rather than Washington, D.C., but because the trip took place after she changed her duty station, the OIG was not able to reach a conclusion about whether the expenses were permissible under the FTR. See Section 1(C)(2) above. On May 9, 2022, Dr. Lemos traveled from San Diego to San Antonio, Texas, to participate in a panel discussion at the 2022 National Occupational and Process Safety Conference and Exhibition. Her expenses for this trip were \$1,722.10.

not her official duty station or a temporary duty station. Under the FTR, she was only entitled to reimbursement for her airfare in the amount it would have cost to travel from Washington, D.C. If the fare from San Diego was higher, then Dr. Lemos would be responsible for the excess cost. Dr. Lemos conceded in her testimony to the OIG that she did not conduct a cost comparison for the trips to Atlanta and Houston. As such, the payment of any expenses related to the excess cost for these flights would not be permissible under the FTR.

### ***C. Travel to Washington, D.C., for a White House Holiday Reception During a Continuing Resolution***

#### 1. Legal Standards

A CR is a joint resolution that provides temporary funding that allows agencies to continue to obligate funds for a specific period when Congress has not passed appropriations legislation by the end of a fiscal year. James V. Saturno, *et al.*, Cong. Research Serv., R42388, *The Congressional Appropriations Process: An Introduction* 13 (2016). Funding provided under a CR typically allows agencies to obligate funds at the same rate as in the previous fiscal year, which was the case with the CR that was in place in November and December 2020. *See* Continuing Appropriations Act, 2021 and Other Extensions Act, at Div. A, Section 101, Pub. L. 116-159 (Oct. 1, 2020); *see also* OMB Bulletin 21-01 (Oct. 1, 2020), Attachment A.

The CSB, like all federal agencies, retains some administrative discretion to allocate its funding within a lump-sum appropriation during a CR. *See Matter of Dep't of Com., Off. of Inspector Gen. - Application of Reprogramming Notification Requirement*, B-330108, at 3 (Dec. 23, 2020) (finding that Department of Commerce OIG did not reprogram funds when it reorganized certain units because it did not shift funds between relevant subdivisions of its lump-sum appropriation).

#### 2. Facts

On November 16, 2020, Dr. Lemos received an invitation to a holiday reception at the White House, which was scheduled for December 2. At the time, Dr. Lemos had planned to take leave on December 2–4, 2020. On November 17, 2020, however, she contacted the CSB's [REDACTED] and [REDACTED] via email and asked whether there would be room in the travel budget for her to take a trip to Washington to attend the reception. At the time, the federal government was operating under a CR that funded the government through December 11, 2020.

According to the CSB's [REDACTED], the CSB only allowed essential travel during a CR, and the CR itself stated that it “shall be implemented” in a way that “only the most limited funding action” permitted under the CR shall be taken “in order to provide for [the] continuation of projects and activities.” Continuing Appropriations Act, 2021, § 110.

In her email inquiry, Dr. Lemos stated that the trip to D.C. “would be in the best interest of [her] agency’s progress in terms of networking” and would ensure she had time to work with a recently hired senior advisor to Dr. Lemos. On November 19, the [REDACTED]

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responded with an email listing several reasons why it would not be in the best interests of the Board for Dr. Lemos to take a “non-essential trip to Washington” during the CR, including the fact that “the agency ha[d] spent almost \$8K on [her] travel alone since October” and that Dr. Lemos had previously “agreed that [she was] fine without traveling anymore [that] calendar year.” Dr. Lemos responded that she had a different view of the “determination of essential” and that she would discuss it further with the CSB’s [REDACTED], who was the direct supervisor of the [REDACTED].

In the end, the [REDACTED] authorized \$2,000 for Dr. Lemos to travel to Washington, D.C., from November 30 to December 4, 2020, with Dr. Lemos paying any expenses over the authorized amount. The funds were moved from the internal CSB line item for investigations travel to the chairperson’s travel, both of which were included within the CSB’s overall travel budget.

### 3. Analysis

The OIG did not substantiate the allegation that Dr. Lemos’s December 2020 trip to Washington, D.C., violated restrictions associated with the CR that was in place at the time. The CR did not suspend travel for CSB personnel; instead, it permitted the CSB to continue spending at the same rate as in the previous fiscal year. While the CSB’s [REDACTED] understood that only “essential” travel was allowed during a CR, she could not identify any legal authority or guidance document to support her understanding. According to her, the CSB did not have a written policy relating to travel restrictions under a CR.

The CSB retains some level of discretion to shift funds within a lump-sum appropriation during a CR. *See* B-330108. According to the [REDACTED], when Dr. Lemos requested funding for the December 2020 trip, she had already used up her allocated travel funds under the CR. Ultimately, the [REDACTED] approved \$2,000 for the trip, and \$2,000 was moved from the investigations travel budget to the chairperson’s travel budget. This movement of funds appears to be consistent with the CSB’s general discretion to shift funds within a lump-sum appropriation.

Although Dr. Lemos was not permitted under the FTR to use government funds for any of her trips to her official duty station in Washington, D.C., including this trip, the OIG did not substantiate the allegation that the funding of the December 2020 trip also violated restrictions associated with the CR.

### **D. Conclusion**

Dr. Lemos’s embarkation on a naval aircraft carrier was not official CSB business and her use of government funds for the travel to Norfolk constituted a violation of the FTR. The flights to Atlanta and Houston should have been expensed at the cost of travel from Dr. Lemos’s duty station in Washington, D.C. Under the FTR, any additional expense incurred in traveling from San Diego was Dr. Lemos’s responsibility. Finally, the OIG did not substantiate the allegation

that Dr. Lemos's trip to Washington for the White House holiday reception was a separate violation of restrictions associated with the CR that was in place at the time.

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## Chapter 3: The Furnishing and Redecorating of Dr. Lemos's Office

Evidence gathered in the OIG's investigation shows that the CSB incurred expenses of more than \$22,000 to furnish and redecorate Dr. Lemos's office at the CSB's headquarters in Washington, D.C. This amount is more than four times the amount allowed under federal law without prior notification to Congress, which the CSB conceded that it did not provide. In addition, the documentation for one purchase order appears to have been designed to obscure the fact that the furniture covered by that purchase order was intended for Dr. Lemos's office.

### A. Legal Standards

The heads of federal agencies are subject to limitations on the amounts that can be spent to furnish or redecorate their offices. Under the Consolidated Appropriations Act of 2020, the "head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States" may not spend more than \$5,000 during his or her term in office "to furnish or redecorate" his or her office, unless advance notice is provided to the Committees on Appropriations of the House and the Senate. Consolidated Appropriations Act, 2020, Pub. L. 116-93, Div. C, Title VII, § 710 (Dec. 20, 2019) (Section 710). The term "office" includes "the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual." *Id.*; see also *U.S. Dep't of Hous. and Urban Dev. - Compliance with Statutory Notification Requirement and the Antideficiency Act*, B-329955, at 6 (May 16, 2019) (finding that dining room and kitchen adjacent to agency head's office were "used primarily by" and "directly controlled by" agency head, and thus were within the statutory meaning of "office" for purposes of the \$5,000 cap).

A violation of Section 710 also constitutes a violation of the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A). The Antideficiency Act provides that "an officer or employee of the United States Government ... may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." Because Congress has the power to condition the appropriation of funds on the satisfaction of a notification requirement, as it has done in Section 710, a violation of the notification requirement constitutes a violation of the Antideficiency Act. See *Matter of Fed. Mar. Comm'n - Failure to Comply with Statutory Notification Requirement and the Antideficiency Act*, B-327432, at 3 (June 30, 2016); see also B-329955, at 7. If an agency determines that a violation of the Antideficiency Act has occurred, then the head of that agency must report all relevant facts and provide a statement of actions taken to the president and Congress, with copies of each report to the comptroller general. See 31 U.S.C. § 1351.

The Federal Management Regulation also places limits on federal agencies' ability to purchase furniture. Before acquiring new furniture, an agency is required to "make a determination as to whether the requirements of the agency can be met through the utilization of already owned items." 41 C.F.R. § 101-25.104. In addition, "[t]he acquisition of new items shall be limited to those requirements which are considered absolutely essential and shall not include upgrading to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more

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expensive lines.” *Id.* Once that determination has been made, the purchase of new furniture can only be done under certain circumstances. *Id.* In all of these cases, the agency’s justification must be documented and maintained in the agency’s file. *Id.* In cases in which the purchase of new furniture is justified, the agency is still limited to “the least expensive lines which will meet the requirement.” *Id.*

Per the regulation, federal agencies should only purchase new furniture when absolutely necessary. When purchasing new furniture, agencies should select the least expensive option that will meet the requirement. Expenses that “would serve no purpose other than accommodating employees’ personal tastes ... generally cannot justify the expenditure of appropriated funds.” *U.S. Dep’t. of Navy v. Fed. Labor Rel. Bd.*, 665 F.3d 1339, 1350 (D.C. Cir. 2012) (finding that an agency’s use of appropriated funds to purchase bottled water for employees was improper when safe and drinkable tap water was already available).

Agencies are permitted to make purchases below a certain threshold without soliciting quotations from multiple vendors, a type of acquisition that is called a micro-purchase. CSB Board Order 24, Part III § 15(a); *see also* Federal Acquisition Regulation § 13.203(a)(2). At the time of the furniture purchase in this investigation, the CSB’s micro-purchase threshold was \$10,000. CSB Board Order 24, Part III § 16(b). Agencies may not split a transaction into multiple purchases that are below the threshold to avoid the requirements for acquisitions above the micro-purchase threshold. Federal Acquisition Regulation § 13.003(c)(2).

## **B. Facts**

The CSB moved into a new office space on September 21, 2015, and acquired new furniture as part of that move. Within a month of starting her term as chairperson of the CSB in April 2020, Dr. Lemos expressed a desire to purchase new furniture for her office. She complained to colleagues and others that her office was small and that it was not set up for her particular work style. She wanted a desk that would move up and down, allowing her to work in a standing position, and she also stated that the office was not set up well for teleconferencing during the coronavirus pandemic. According to another witness, Dr. Lemos expressed a desire for a “casual meeting space” in her office where she could “sit down with [her] guests,” and she talked about having a television on the wall. She also expressed a desire for a wardrobe because she expected to travel frequently and wanted a place to store clothing.

In her interview with the OIG, Dr. Lemos testified that the existing furniture was “broken” and “non-functional.” When asked to provide examples, she said that one of the drawers was difficult to push in, the conference table was small, and the coat closet was too short for her blazer. Other witnesses provided contrary testimony about the condition of the furniture. In the opinion of a CSB staff member [REDACTED], the existing furniture was serviceable; furthermore, according to this staff member none of it was broken or nonfunctional, and the previous occupant of the office had never complained about it. A representative from Dr. Lemos’s furniture dealer inspected the previous furniture as well and found that “it looked like

pretty new or ... unabused furniture. ... I don't think anybody would look at it and say that it was dilapidated or broken." The serviceable condition of the existing furniture in Dr. Lemos's office was confirmed by a series of photographs taken by a CSB staffer on May 15, 2020, and reviewed by the OIG.



Photographs of the existing furniture in Dr. Lemos's office (Room 906), taken by a CSB staff member on May 15, 2020 (detail).

In June of 2020, Dr. Lemos began working with representatives of a furniture vendor that was recommended by [REDACTED]. [REDACTED] had previously worked in the furniture business, and he had been professional colleagues with certain personnel at the vendor.<sup>10</sup> Dr. Lemos met with the vendor's representatives for the first time on June 23, 2020. In a follow-up email a couple of days later, she explained to them, "I've been afforded the opportunity to remake the space as I wish."

Documents obtained by the OIG showed that, from early in the discussions with the vendor, the plan for Dr. Lemos's office included two lounge chairs. In July 2020, the vendor provided Dr. Lemos with several graphic renderings and floor plans reflecting possible furniture options for her office. The first diagram, dated July 9, showed a design that included a small conference table with four chairs. On July 13, Dr. Lemos's [REDACTED] suggested replacing the conference table and chairs with two "soft lounge chairs" and a small table. [REDACTED] later stated in an email that his suggestions were based on his "feel" for "Katherine[']s style." The vendor then provided an updated rendering dated July 20 that included two lounge chairs and a small table placed in Dr. Lemos's office where the conference table had been. All of the office renderings and diagrams that the vendor provided to Dr. Lemos from that point on included two lounge chairs in

<sup>10</sup> The furniture vendor was a GSA-approved vendor, as were the two furniture manufacturers involved in the purchase orders.

her office. In the September 10 rendering, the chairs were shown in red upholstery, which was the color Dr. Lemos ultimately chose.

While the discussions with the vendor proceeded, Dr. Lemos asked CSB staff members various questions about how the furniture purchases would be funded. She understood that the acquisition needed to be done as a micro-purchase, which had a limit of \$10,000. Dr. Lemos addressed similar questions to a different furniture dealer. In an email to Dr. Lemos, that dealer explained, “I have also seen agencies split purchases to get projects through that are over the \$10K amount. It’s not supposed to happen, but often times, it does.” Three days later, Dr. Lemos emailed CSB’s [REDACTED] and asked, “If we have two different micro-orders, one for [one manufacturer], another for a different MFG (also GSA), would that fit within the guidelines?” The [REDACTED] responded, “The purchases **are doable**” (emphasis in original). That same day, Dr. Lemos emailed the furniture vendor and reported, “I do have a path forward on the funding.”

Dr. Lemos made her final selections regarding the items, finishes, and upholstery she wanted, which included two lounge chairs with matching footrests in a red leather upholstery called “Chili Pepper.” That upholstery selection was in the category the manufacturer designated as “Upper Crust.” According to the vendor’s representative who was interviewed by the OIG, the “Chili Pepper” leather was listed in price grade “Leather V,” which was the second-highest price category for leather upholstery offered by the manufacturer. The selection of that leather added more than \$4,340 to the price of the chairs and matching ottomans as compared with the least expensive fabric upholstery. For the seat of her desk chair, Dr. Lemos chose a lavender-toned leather called “Showcase Lilac.” This selection was in the highest category of leather upholstery offered by that manufacturer, and it added more than \$130 to the price of the chair.

The CSB generated two purchase orders for the furniture selected by Dr. Lemos. One order was designated as being for Room 906, which was Dr. Lemos’s office. The other order was designated as being for Room 907, an office immediately adjacent to Dr. Lemos’s office. Room 907 had previously been assigned to board members but had no occupant at the time. CSB staff members told the OIG that Dr. Lemos had expressed a desire to use Room 907 as her “sitting area,” “library,” or “overflow” area. According to one staff member, Dr. Lemos “said that that needed to be her extra room ... [because] her office was too small.” Another staff member reported that Dr. Lemos had discussed increasing the size of her own office by taking down the wall between the two offices, though that idea never went forward. The previous discussions with the vendor had not included any plan to place furniture in Room 907.

The purchase order for Room 906, which was purchase order 95315820F00002, dated September 17, 2020, included a desk, desk chair, height-adjustable desk, storage cabinet, free-standing wardrobe, dry erase board, and various other items. According to the purchase order, “The purpose of this task order [was] to provide office furniture for the Chairman’s office.” The amount of the award was \$9,690.38, just below the \$10,000 threshold for a micro-purchase.

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The purchase order for Room 907, which was purchase order 95315820F00003, dated September 28, 2020, consisted of the two leather lounge chairs and matching leather ottomans, and a 20-inch diameter laptop table. According to the award, “The purpose of this task order [was] to provide for office furniture for vacant office 907 within the Office of Administration.” The amount of this purchase order was \$8,895.17, which was likewise below the micro-purchase threshold. The vendor never created a floor plan or schematic diagram showing the placement of furniture in Room 907. In an interview with the OIG, the vendor’s representative said that he did not recall who at the CSB asked him to create a separate order for Room 907. All of the vendor’s renderings showed the lounge chairs inside Dr. Lemos’s office, Room 906. The vendor’s representative testified to the OIG that he understood from Dr. Lemos that the lounge chairs were intended for her office.

Pursuant to the CSB’s approval process for administrative expenses, the Board’s [REDACTED] obtained the required internal approvals for the two purchase orders on September 10 and 18. We asked the CSB to provide any findings or analyses under the Federal Management Regulation that the Board’s needs could not have been met with furniture that was already owned, or that the previous furniture was broken and could not be “economically repaired,” but there were no such documents in the CSB’s files. Moreover, the Board’s [REDACTED] did not know if Dr. Lemos’s choices were the least expensive options that would meet the requirements. He was also unaware of the Federal Management Regulation. The CSB provided no advance notice to the Committees on Appropriations of the House of Representatives or the Senate that the furniture purchase for Dr. Lemos would exceed the \$5,000 cap.

Approximately one month before the new furniture was delivered, a CSB staff person was asked to move the existing furniture out of Dr. Lemos’s office, Room 906. That staff person did not receive instructions to move any furniture out of Room 907. On November 30 and December 9, 2020, the staff person asked the vendor whether Room 907 needed to be cleared out in advance of the furniture delivery. The staff member never received an answer and none of the furniture in Room 907 was moved out before the delivery.

The furniture from both orders was delivered to the CSB on December 15, 2020, and all the items, except the wardrobe, were installed in Dr. Lemos’s office, Room 906. The wardrobe was placed in the hallway outside her door because it would not fit well in her office. The vendor’s sales representative was present during the delivery and installation, and he directed that the furniture be installed in



The lounge chairs, ottomans, and table installed in Dr. Lemos’s office, Room 906. The vendor’s sales representative took the photo and sent it to Dr. Lemos on December 15, 2020 (detail).

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Room 906, pursuant to the vendor's drawings. After the installation, the sales representative took photos of the new furniture in Room 906 and emailed them to Dr. Lemos. The photos showed the lounge chairs and other items that were included in the purchase order for Room 907.

In addition to the furniture, the CSB incurred other expenses related to the refurbishment of Dr. Lemos's office. An electrical contractor added or moved electrical outlets to accommodate Dr. Lemos's new height-adjustable desk and the wall monitor panel where a television was to be placed. The total expense for that work was \$2,300. A service provider hauled away the existing furniture in Dr. Lemos's office, at a cost of \$325.42. And an air purifier was purchased for Dr. Lemos's office at a cost of \$549. The total amount spent on the two furniture orders plus the additional expenses was \$21,759.97.

The OIG conducted site visits to the CSB's offices on August 24 and October 7, 2021, and confirmed on both occasions that the furniture from the Room 907 purchase order was in Dr. Lemos's office, Room 906. The OIG conducted an additional site visit to the CSB on February 9, 2022, and confirmed that the freestanding wardrobe outside Dr. Lemos's office was locked. According to a CSB staff member [REDACTED], Dr. Lemos had the key to the wardrobe because "it's there for her use," and the staff member kept a backup key.

### **C. Analysis**

The evidence compiled by the OIG supports a finding that the furniture purchase constituted a violation of the Federal Management Regulation, 41 C.F.R. § 101-25.104, and of the \$5,000 statutory cap in Section 710.

#### 1. Violation of the Federal Management Regulation

Under the Federal Management Regulation, the CSB could only purchase new furniture that was "absolutely essential," and only if the Board's needs could not "be met through the utilization of already owned items." 41 C.F.R. § 101-25.104. If those conditions were met, the CSB was required to make a written determination that the items being replaced were not "economically repairable." *Id.* The Board was also required to select items from "the least expensive lines" that would meet the Board's needs. The new furniture could not be for the purpose of "upgrading to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more expensive lines." *Id.*

In this case, the CSB could provide no documentation of an analysis or determination made by CSB personnel regarding whether the CSB's needs could be met with furniture that was already owned or whether the CSB's existing furniture was broken and could not be "economically repaired." Moreover, the record does not support Dr. Lemos's assertion in her OIG interview that the preexisting furniture was broken or nonfunctional. The CSB moved into its current offices on September 21, 2015, and acquired new furniture as part of that move. The preexisting furniture would have been less than five years old at the beginning of Dr. Lemos's term in April 2020. The

CSB staffer [REDACTED] considered the furniture to be serviceable. And the vendor's representative told the OIG that he did not think anybody would "look at [the furniture] and say that it was dilapidated or broken."

In addition, some of Dr. Lemos's furniture choices were not "limited to the least expensive lines," as required by the Federal Management Regulation. 41 C.F.R. § 101-25.104. Some of the furniture choices appear to have been made in an effort to "upgrad[e] to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more expensive lines," *id.*, in contravention of the regulations. For example, the red-leather upholstery that Dr. Lemos chose for the lounge chairs and matching footrests was in the second-highest price category for leather upholstery offered by the manufacturer. The selection of that leather added more than \$4,340 to the price of the chairs and matching ottomans. The lavender-toned leather that Dr. Lemos chose for the seat of her desk chair was in the highest category of leather upholstery offered by the manufacturer, and it added more than \$130 to the price of the chair. Expenses that "serve no purpose other than accommodating employees' personal tastes" are not a justifiable use of appropriated funds. *U.S. Dept. of Navy*, 665 F.3d at 1350. Dr. Lemos may have believed she had been given "an opportunity to remake the space as [she] wish[ed]," but federal regulations did not permit her to do so.

## 2. Violation of the \$5,000 Cap—Room 906 Furniture

The evidence also supports a finding that, in purchasing furniture for her office, Room 906, Dr. Lemos and the CSB spent more than the \$5,000 permitted by law without the required advance notice to Congress. In her interview with the OIG, Dr. Lemos conceded that the statutory limit on expenses for office refurbishment was \$5,000, and that the congressional committees were never given advance notice. The furniture on the purchase order for Room 906 alone cost \$9,690.38. The electrical outlet installations, removal of existing furniture, and purchase of an air purifier added another \$3,174.42. This brought the total cost "to furnish or redecorate" Dr. Lemos's office to \$12,864.80, based on the expenses that the CSB attributed to Room 906. Dr. Lemos did not provide advance notice of the amount exceeding \$5,000 to the Committee on Appropriations in the House of Representatives or the Senate. As such, the amount spent in excess of \$5,000 was in violation of Section 710.

The freestanding wardrobe included in the order for Room 906 warrants a separate discussion. In her interview with the OIG, Dr. Lemos stated repeatedly that the wardrobe was for the use of the entire Board and not for her use alone. If that testimony was true, then under Section 710, the cost of the wardrobe could be excluded from the expenses of furnishing or redecorating her office. Section 710 expressly states, however, that the term "office" includes "the entire suite of offices assigned to the [agency head], as well as any other space used primarily by the individual or the use of which is directly controlled by the individual." As such, any item "used primarily by" Dr. Lemos or "directly controlled by" her should therefore be included in the total.

The facts and circumstances suggest that the wardrobe was used primarily by Dr. Lemos and was directly controlled by her. First, the wardrobe was part of the purchase order for Room 906, which was “to provide office furniture for the Chairman’s office.” Second, the wardrobe was placed immediately outside the door to Dr. Lemos’s office. Third, there is testimony from CSB staff members and the vendor’s representative that the wardrobe was for Dr. Lemos’s use alone and not for the use of the entire Board. In the words of one staff member, Dr. Lemos expressed a desire to have a closet for her clothes “since she was coming back and forth from San Diego ... [and] not wanting to have to transport clothes back and forth.” According to the vendor’s representative, the wardrobe was placed in the hallway because it would not fit well in her office. Fourth, the OIG determined that the wardrobe was not available for others to use because it was locked and Dr. Lemos had custody of the key. The OIG conducted a visit to the CSB’s office on February 9, 2022, and found that the wardrobe was locked. When the wardrobe was opened with a backup key maintained by a staff person, the OIG found that it was filled to capacity with what appeared to be women’s clothing. Fifth, CSB staff members had other places where they could hang their coats, including their own offices and the coat closet located in the reception area. Based on these facts and circumstances, the OIG does not find Dr. Lemos’s testimony about the wardrobe to be credible. Because the evidence shows that the wardrobe was for Dr. Lemos’s use alone, the cost of the wardrobe should be included in the total expenditure for furnishing and redecorating Dr. Lemos’s office.

### 3. Violation of the \$5,000 Cap—Room 907 Furniture

Dr. Lemos’s testimony to the OIG prompted the question whether the furniture that was on the purchase order designated for Room 907 should be included in the total expenses for furnishing and redecorating her office. Dr. Lemos testified that these items were intended for the use of the entire Board. Considering all the evidence, however, the OIG determined that the items on the Room 907 purchase order were intended for Dr. Lemos’s own use and should be included in the total.

The purchase order for Room 907 covered five items: two leather lounge chairs, two matching leather footrests, and one small laptop table. In her testimony to the OIG, Dr. Lemos stated repeatedly that this furniture “was for a conference room,” “a private space for people to talk that wasn’t [their] own office.” She testified that the Board “needed a space, a private space. There was no conference room on this end of the building. ... So we had planned to outfit a place for staff and [personal assistants] to share conversations without having to take up the larger conference rooms or the open conference room.” Dr. Lemos specifically stated that this would not be her personal conference room but an “agency staff conference room.” Dr. Lemos reiterated these points in the letter from her personal legal counsel dated February 10, 2022:

With staff guidance, Dr. Lemos also agreed to convert an empty office in the administrative arm of the offices into a conference room. That way, Dr. Lemos, future appointees, and CSB employees would have a private space available for small meetings that satisfied COVID safety protocols. There

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was no such space in the administrative section. The CSB chose the office next door to Dr. Lemos' office because it had some temperature control issues (reported by facilities management) that made it undesirable as a permanent office. As part of the conversion from an office to a conference room, that space needed to be refurnished.

[The ██████████] explained to Dr. Lemos that it made sense to convert the conference room at that point in time because employees had not yet returned to CSB offices, and any disruption would be minimal. [The ██████████] also explained that refurnishing both offices at the same time would maximize efficiency and the budget had available funds for these purchases.

The furniture was for two rooms—Dr. Lemos' office (Office 906) and the new conference room (Office 907).

In her interview with the OIG, Dr. Lemos admitted that the furniture listed on the purchase order for Room 907 was delivered and installed in her office, Room 906, on December 15, 2020. She testified that the furniture was being held in her office temporarily because Room 907 had not been emptied. She also testified that it was still there more than one year later.

Dr. Lemos went on to testify that the CSB only found out a month prior to her December 2021 interview that Room 907 "wasn't inhabitable." She stated, "In fact, I didn't even learn until, um, a month ago that none of the old ... board member offices were cleaned. They still have all their personal effects in there. So, we've been making progress on that because we have new board members coming. ... It's hard to believe that people leave everything in their office." According to Dr. Lemos's testimony, the Room 907 furniture "was delivered to [her] office knowing that [they] would need to take out the other furniture, which would cost extra money."

The OIG was unable to find any documents or testimony to support Dr. Lemos's statements regarding her intention to use the lounge chairs for a staff conference space in Room 907. To the contrary, the OIG uncovered a significant amount of evidence contradicting Dr. Lemos's testimony and, based on the weight of that evidence, the OIG does not find Dr. Lemos's testimony regarding the Room 907 furniture to be credible.

First, the lounge chairs were part of the written plan for Dr. Lemos's office—not Room 907—as far back as July 2020. On a July 13, 2020 call with the vendor, Dr. Lemos's ██████████ suggested replacing the conference table with a "soft seating option." From that point on, the diagrams and floor plans that the vendor provided to Dr. Lemos show two lounge chairs and a small table in Dr. Lemos's office in exactly the position where they were ultimately installed. The vendor representative confirmed that no schematic diagrams were ever made showing the lounge chairs in Room 907 because he understood that they were always intended for Dr. Lemos's office.



Second, the lounge chairs and other items from the Room 907 purchase order were delivered and installed in Dr. Lemos's office. The vendor's representative who was on site during the delivery emailed Dr. Lemos photos of the items in her office after the installation was complete. Dr. Lemos did not complain that the lounge chairs had been delivered to her office in error. She conceded that the items were put in her office and were still there as of the date of her OIG interview. The OIG conducted site visits to the CSB's offices on August 24 and October 7, 2021, and found the chairs placed in the exact position shown in the vendor's renderings and floor plans. Whether or not Dr. Lemos ever had different plans for the lounge chairs and other items, she did in fact use them to furnish her own office.

Third, none of the CSB staff members we interviewed had ever heard Dr. Lemos discuss using Room 907 for a staff conference room. To the contrary, CSB staff members testified that Dr. Lemos wanted to use Room 907 as her own personal "sitting area" or "library," and that all the furniture was for her use. As one former staff member testified, "[A]ll the furniture was for the chairperson. Okay? Make no mistake about that. All the furniture was for the chairman. ... [E]veryone knew, yes, that it was for the chairman. ... it was specifically for the chairman." Another CSB staff member testified, "[T]hat's the additional office she said that she needed. ... She said that it needed to be her extra room ... [because] her office was too small."

Fourth, Dr. Lemos's testimony that Room 907 was "uninhabitable" because the previous occupant's personal effects had not been cleared away was contradicted by CSB staff member testimony and the OIG's observations. The CSB staff member [REDACTED] testified that, at the time the furniture was delivered, there were no personal effects in Room 907. The OIG conducted site visits to the CSB's offices on August 24, 2021, and October 7, 2021, and saw no personal effects in Room 907, only standard office furniture. Moreover, if the Board wanted the room cleared, it could have done so at any point prior to the delivery of the new furniture or afterwards. In fact, the CSB staff member [REDACTED] asked the vendor on more than one occasion if Room 907 should be cleared of its existing furniture or if any other preparation for the new furniture was necessary. No answer was provided.

Fifth, Dr. Lemos's testimony regarding the need for an additional conference room is not credible given the existing conference rooms at the CSB. At the time of the OIG's investigation, there were four conference rooms in the office suite, three of which had doors that would close. The CSB is a very small agency. As of September 2020, when the furniture order was placed, the total headcount for the Washington, D.C., headquarters office was 16 employees. As of March 2022, the total was 14 employees. In addition, every current CSB staff member had an office with a door that would close. The assertion that the CSB needed a fifth conference room for barely more than a dozen employees is simply not plausible.

Finally, the furniture listed on the Room 907 purchase order is not typical conference room furniture. It consisted of two bright-red leather lounge chairs, matching ottomans, and a laptop table with a 20-inch diameter surface. It strains credulity to believe that Dr. Lemos intended to

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provide CSB staff members with a conference room where they would be able to meet privately while sitting in red-leather lounge chairs with their feet resting on matching leather ottomans.

In summary, the OIG found no evidence to support Dr. Lemos's testimony on this point and a significant amount of evidence contradicting it. As such, the OIG does not find Dr. Lemos's testimony regarding the Room 907 furniture to be credible. The overwhelming weight of the evidence supports a finding that the Room 907 furniture was always intended for Dr. Lemos's own office, Room 906.

The OIG was not able to determine how the chairs, ottomans, and laptop table came to be designated for Room 907; nor were we able to determine who was responsible for structuring the purchase in that way or directing that it be done. The witness testimony was inconclusive, and the OIG was unable to uncover any documentary evidence answering the question.

Dr. Lemos was aware, however, that some of the furniture was designated in the paperwork as being for Room 907. She used the Room 907 designation herself in correspondence with the vendor. In her December 2021 interview with the OIG and her counsel's letter to the OIG on February 10, 2022, Dr. Lemos maintained that the Room 907 furniture was intended to go in Room 907, despite the voluminous evidence to the contrary and the fact that the furniture went into her own office. Considering all the evidence, the Room 907 designation suggests an intent to obscure the fact that the furniture was going into Dr. Lemos's office.

#### ***D. Conclusion***

The OIG substantiated the allegations regarding the furnishing and redecorating of Dr. Lemos's office. The evidence supports a determination that the CSB incurred expenses of \$22,057.26 to furnish and redecorate Dr. Lemos's office, in violation of the Federal Management Regulation and the \$5,000 cap allowed under federal law without notification to Congress.<sup>11</sup>

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<sup>11</sup> On April 15, 2022, Dr. Lemos notified the White House and the comptroller general of a violation of the Antideficiency Act, 31 U.S.C. § 1341, based on the purchase of furniture for her office, but only for the furniture included on the purchase order for Room 906. She did not include the furniture on the Room 907 purchase order or any of the incidental expenses mentioned above.

## Chapter 4: The Noncompetitive Hiring of Senior Advisors

The OIG also investigated whether Dr. Lemos improperly hired two senior aides on a noncompetitive basis, including a senior advisor from Northrop Grumman, Dr. Lemos's former employer. The investigation did not substantiate any allegation of misconduct related to the hiring of the two senior aides.

### A. Legal Standards

In the Senior Executive Service, or SES, federal law provides for various types of noncompetitive appointments, including "limited-term appointments" and "noncareer appointments." A limited-term appointee is "an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term." 5 U.S.C. § 3132(a)(5). A noncareer appointee is "an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee." 5 U.S.C. § 3132(a)(7).

An appointment to one of these positions must fulfill the following requirements:

- The appointee "shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority," 5 U.S.C. § 3394(a); *see also* 5 C.F.R. § 317.603.
- An individual may not be appointed as a noncareer appointee or limited-term appointee without prior approval from the OPM. *See* 5 U.S.C. § 3394(b); 5 C.F.R. § 317.601.

If those requirements are met, then neither the noncareer appointment nor the limited-term appointment requires the agency to use merit hiring procedures. *See* 5 C.F.R. § 317.603.

### B. Facts and Analysis

In 2020 and 2021, the CSB made two noncompetitive appointments of SES personnel. The first individual was appointed to a noncareer position as senior advisor, under 5 U.S.C. § 3394(a), effective November 8, 2020. This individual had worked with Dr. Lemos at Northrop Grumman. The second individual was appointed to a nonrenewable three-year limited-term SES position as senior advisor and executive counsel, under 5 U.S.C. § 3394(a), on January 12, 2021.

From the evidence uncovered by the OIG, both appointments appear to have fulfilled the statutory requirements for noncompetitive SES appointments. The appointments required a determination in writing by the "appointing authority" that each appointee "meet[s] the qualifications of the position to which appointed." 5 U.S.C. § 3394(a). Dr. Lemos served as the "appointing authority" as required by Section 3394 and CSB Board Order 23(6)(a). In both cases, she provided a written determination for each appointee in the signed OPM Forms 1652. Each appointment received individual approval from OPM. The record reflects that the

requirements for both individuals' appointments were satisfied. There appears to be no statutory or regulatory violation in making the appointments on a noncompetitive basis.

**C. Conclusion**

The OIG did not substantiate any allegation of misconduct related to the noncompetitive hiring of two senior aides.

## Chapter 5: Dr. Lemos's Use of Board Funds for Her Own Training

The evidence gathered in the OIG's investigation shows that Dr. Lemos used \$24,700 of Board funds to receive media training and executive coaching from two outside providers. The OIG determined that the use of these funds for Dr. Lemos's training without prior approval from OPM violated the Government Employees Training Act, or GETA, and OPM regulations.

### A. Legal Standards

Training for federal employees is governed by the GETA, which mandates the creation of agency training programs and establishes the categories of expenses that an agency may pay or reimburse to employees for approved training. 5 U.S.C. §§ 4103, 4109. By statute, presidential appointees may not use agency funds for their own training, "unless the individual is specifically designated by the President for training." 5 U.S.C. § 4102(a)(2)(B). OPM has been delegated the authority to designate presidential appointees for training by Executive Order 11895 (Jan. 6, 1976). OPM, in turn, delegates to the head of each agency the authority to authorize training for other presidential appointees. An agency head may not authorize his or her own training. 5 C.F.R. § 410.302(c). Agency heads must submit training requests to the OPM for review because self-review would constitute a conflict of interest. *Id.* The OPM has created procedures for such requests. Without OPM approval, agency heads are barred by law from using agency funds for their own training.

### B. Facts and Analysis

In the summer of 2020, the CSB engaged a media training firm to provide "Media Training for Dr. Lemos." Dr. Lemos received media training from this vendor multiple times when she worked at Northrop Grumman. In her testimony to the OIG, Dr. Lemos could not recall how many times she received media training from the vendor at Northrop Grumman, but she said it was "routine." Dr. Lemos also received media training from other providers when she was at the National Transportation Safety Board and the Federal Aviation Administration.

Dr. Lemos expressed an interest in obtaining media training soon after arriving at the CSB. The vendor made contact with her in June 2020. After some discussions, the vendor provided a proposal with a rate of \$5,000 for a half-day training session and \$10,000 for a full day. The vendor was not a GSA vendor and did not have a government rate, but the CSB engaged the company anyway and did not consider other vendors. A micro-purchase request form was completed on June 18, 2020, noting that the justification for the request was "Media Training for Dr. Lemos," and it was approved the next day.

The vendor provided three partial-day training sessions for Dr. Lemos in July 2020. The sessions focused on media skills and messaging. On July 28, 2020, the vendor submitted an invoice to the CSB for \$10,000, describing the services provided as "Media Training and Messaging Program for Katherine Lemos (includes 7/13, 7/16 and 7/21)." According to the vendor interviewed by the OIG, a CSB employee was present in these sessions but did not participate in the training.

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The CSB engaged the vendor for another training session for Dr. Lemos that took place on September 25, 2020, for which the CSB was invoiced \$2,500. The invoice described the services provided as “Media Training/Prep/Messaging for Dr. Katherine Lemos.” The purpose of the session was to prepare Dr. Lemos for a video shoot. According to Dr. Lemos, no other CSB employees were present for the training session.

The vendor provided another two training sessions for Dr. Lemos on September 27 and 28, 2021, for which the CSB was invoiced another \$10,000. The CSB micro-purchase request form stated that the purpose of the request was “media training for the Chairman.” The vendor’s invoice described the services provided as “Media Training/Prep/Messaging for Dr. Katherine Lemos and Leadership Team.” The sessions in September 2021 were intended to prepare Dr. Lemos for her testimony before a congressional committee. According to Dr. Lemos, two CSB senior advisors participated in the sessions to prepare questions she would likely receive from members of the committee. According to the vendor, the other CSB personnel in attendance were not undergoing training themselves; they were present as observers.

Each of the vendor’s three engagements was done as a separate micro-purchase. In her testimony to the OIG, Dr. Lemos stated that each of the micro-purchase requests had a different scope of work.

In September of 2020, the CSB engaged a consultant to provide Dr. Lemos with “Executive Coaching support and a strategic plan regarding Government Relations.” According to an August 18, 2020 email from Dr. Lemos, the highest priority for the engagement with the consultant was “Individual coaching (similar to [the media training vendor]).” The total value of the contract award was \$10,000. Dr. Lemos met with the consultant for one-on-one coaching sessions on October 8 and 30, 2020, for which the CSB was invoiced \$2,200. Dr. Lemos described the sessions as providing “individual coaching on how to interact with the government and the various entities.”

In an interview with the OIG, Dr. Lemos stated that she had not been aware of the requirement to obtain OPM approval before using Board funds for her own training expenses and had not done so.

In her June 15, 2023 response to the OIG’s preliminary report of investigation, Dr. Lemos, through her personal legal counsel, asserted that:

[T]he training sessions included other CSB employee participants (not just Dr. Lemos), were for furthering the agency’s mission, and were discussed with contracting staff in advance. Most important, these contracts were reviewed and approved through appropriate CSB channels in advance.

As explained above, however, the CSB micro-purchase requests and the vendor’s and the consultant’s invoices show that the media training was intended for Dr. Lemos. Some of the training sessions were attended by other CSB personnel, but those individuals were not receiving

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training; they were present as observers. And although the training vendor contracts were reviewed and approved by CSB staff, Dr. Lemos never sought or received approval from the OPM to use government funds for her own training, as required by GETA and OPM regulations.

### ***C. Conclusion***

The OIG substantiated the concerns about the use of Board funds for Dr. Lemos's training. Dr. Lemos incurred a total of \$22,500 in expenses for media training and \$2,200 for executive coaching, without approval from OPM. As chairperson of the CSB, Dr. Lemos was not entitled to use CSB funds to pay for her own training without obtaining OPM approval in advance.

## Appendix A

On May 11, 2021, the advocacy group Public Employees for Environmental Responsibility issued a press release that, among other things, raised questions about Dr. Lemos's travel and office refurbishment. As noted in the Report of Investigation (see p. 7), Dr. Lemos discounted the possibility that the PEER press release identified a genuine problem with her travel. In response to the PEER press release, the CSB drafted a statement on Dr. Lemos's travel that was sent to certain media outlets. The OIG included the facts and circumstances of the CSB response within the scope of this investigation.

According to the PEER press release, during her first few months in office, Dr. Lemos:

Charged taxpayers \$33,000 for travel, primarily from her home in San Diego, California (where there are no CSB assets) to DC. Besides airfare, expenses include hotel bills, including several nights at DC's Park Hyatt, which describes itself as a "luxury boutique hotel." Such stays appear to violate the rule against paying for lodging within 50 miles of the employee's duty station. Notably, one trip was for her and [REDACTED] to attend an RNC-sponsored Trump Christmas party; [and she r]an up nearly \$20,000 in office renovations, including \$9,000 in new furniture. This tab well exceeds the \$5,000 cap on office renovations for federal officials.

The CSB issued a response that stated in part:

The CSB adheres to all travel regulations and good practices. Her stays here in D.C. are done so at the Government Rate and the hotel is within a mile of the CSB's offices removing the need for an automobile rental. Travel expenses for [REDACTED] were not charged to the Government. Any accusation to the contrary is poorly informed and inaccurate.

The Chairman is working tirelessly to release safety information and move the CSB's safety mission forward.

GSA recommended that all moves be suspended during the middle of the global pandemic, therefore she travels to and from D.C. to ensure her duties as Chairman are carried out effectively, and include frequent use of several virtual communications platforms.

The CSB response did not address PEER's allegation about office renovations.

As part of this investigation, the OIG asked Dr. Lemos and other CSB personnel about the Board's response to the PEER press release. None of the witnesses interviewed by the OIG, including Dr. Lemos, could point to any steps taken by the CSB to determine whether PEER's statement about government travel rules was accurate. When she was asked about it in her interview with the OIG, Dr. Lemos said, "We didn't believe their statement. ... [It] wasn't given

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any credence because [PEER] didn't understand the situation." She was told by her staff, "[I]t's half-truths ... as usual."

Dr. Lemos was not able to provide any information on steps taken to determine whether PEER's statement about the rule was accurate. "I asked my staff to look into it," she testified in her interview. "I don't know what steps they took." Even during her December 2021 OIG interview, Dr. Lemos could not say whether such a rule existed.

Moreover, the CSB response to the PEER press release contained statements that appear to be misleading or inaccurate. For example, the CSB response stated, "The CSB adheres to all travel regulations and good practices." As explained in the report of investigation, however, Dr. Lemos did not adhere to the FTR in using Board funds for travel from her home to her duty station. In her interview, Dr. Lemos could not say whether any steps were taken at the time to confirm the accuracy of the CSB's statement.

The PEER press release should have alerted Dr. Lemos to the possibility that her travel to Washington, D.C., was a potential violation of "the rule against paying for lodging within 50 miles of the employee's duty station." As Dr. Lemos's travel documents show, however, her travel practices did not change significantly after the PEER press release. She continued to travel at almost the same rate as she had in the previous year. When asked about it in her OIG interview, Dr. Lemos said, "I didn't think I was doing anything wrong."

Dr. Lemos also testified that she did not know what steps were taken by the CSB to determine whether PEER's statement about the \$5,000 statutory cap on office renovations was accurate: "I asked for those to be reviewed ... no one ever got back to me on the furniture." "In fact," she said, "it wasn't until we heard from [the OIG] that I — I was aware of the 5,000 limitation. I looked it up." When asked why more work was not done to get to the bottom of PEER's allegations, Dr. Lemos said, "PEER comes up with a lot of things. Yes, in this case they happened to be accurate."



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