



# Smithsonian Institution

Office of the Inspector General

## REPORT OF INVESTIGATION

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### SUMMARY

This report addresses allegations that Pilar Frank O'LEARY, the Director of the Smithsonian Latino Center, violated the Smithsonian Standards of Conduct and other Smithsonian policies.

The Smithsonian Standards of Conduct (Smithsonian Directive (SD) 103) require that Smithsonian employees demonstrate loyalty to the Institution and not engage in activities that constitute, or that could give the appearance of, a conflict of interest, such as giving preferential treatment to any person or company. SD 103 § 1.

The Standards of Conduct emphasize that "the primary responsibility rests with each individual employee to be familiar with these standards, to act in accordance with them, and to seek guidance before engaging in any activity that might not be consistent with the principles or specific provisions set forth in these standards." To that end, the Standards also require employees to seek advice "immediately" from an ethics counselor "[i]f any doubt exists as to whether an activity or planned activity violates these standards." SD 103 § 2.

The Trust Personnel Handbook, SD 213 - Chapter 735, also states "Employees should avoid any action, whether or not specifically prohibited, that might result in or create the appearance of using their Smithsonian employment for private gain, misusing Smithsonian property, impeding Smithsonian efficiency or economy, making an official decision outside official channels, or adversely affecting the confidence of any person in the integrity of the Smithsonian Institution."

The evidence gathered in this investigation indicates that on multiple occasions O'LEARY violated these general ethical rules, as well as specific prohibitions on conduct that constitutes or appears to constitute a conflict of interest; on soliciting gifts and accepting gifts from prohibited sources; and on using Smithsonian resources for private gain. She also violated the travel policy, particularly through repeated misuse of her Smithsonian-issued travel card. Finally, she also engaged in other questionable conduct that created an appearance of impropriety and could compromise public confidence in the Smithsonian. (*Exhibit 1*)

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PREPARED BY: [REDACTED]

CASE NUMBER: [REDACTED]

*Exemption 2*

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We present the allegations and findings in the following order:

**Background**

**Investigation**

**Violations of Smithsonian Policy**

**Conflicts of Interest**

- Improper Contract with [REDACTED]*
- Lack of Impartiality in Contracting*
- Unauthorized Commitment of SI Funds*

**Gifts from Outside Sources**

- Soliciting and Accepting Gifts from Prohibited Sources*
- Soliciting and Accepting Gifts from Other Sources*
- Accepting Travel Expenses from a For-Profit Source without Clearance*

**Improper Claim for Travel Expenses Not Incurred**

**Travel Policy – Misuse of Travel Card**

- Failure to Pay Travel Card Balance Timely*
- Personal Use of Travel Card*
- Failure to Use Travel Card on Official Travel*

**Personal Use of SI Property and Resources**

- Use of Courier Service*

**Other Questionable Conduct**

**Extravagant Travel and Other Questionable Expenditures**

**Using SI Funds to Move Donated Furniture to Residence**

**BACKGROUND**

Pilar O'LEARY was hired as the Director for the Smithsonian Latino Center (SLC) (formerly the Smithsonian Center for Latino Initiatives) in August 2005. She serves at the discretion of the Secretary and until recently reported to the Deputy Secretary/Chief Operating Officer (she now reports to the Acting Undersecretary for History and Culture). She had previously worked with private corporations, serving as Associate General Counsel for J.P. Morgan and Fannie Mae, and had been involved in various Latino outreach initiatives. She had no prior experience in government or in the non-profit sector. O'LEARY has a law degree and undergraduate degree from Georgetown University.

The Latino Center has the following sources of funds: 401, 402 and 801 trust funds, and two types of federal funds. The federally appropriated funds consist of the S&E (used for salary and expenses) and the Latino Initiative Pool (funds that can be used for programming only). Trust funds were always used for O'LEARY's travel as she is a trust employee. Federally appropriated funds were designated for the contract that was issued to [REDACTED].

During the course of the investigation, the Office of the Inspector General (OIG) interviewed employees from numerous SI units, as well as outside contractors and other individuals, and reviewed and obtained relevant documentation, e-mail correspondence and text messages.

Two OIG Senior Special Agents interviewed O'LEARY at length. They informed her that the U.S. Attorney's office had declined to prosecute and that she was not under criminal investigation. They then advised her of her rights as an employee and her obligation to speak to them and to tell the truth. Thereafter, the agents wrote up her statement, which she signed and swore to after adding some edits. Subsequently, O'LEARY's legal counsel provided an additional declaration on her behalf. O'LEARY's statements are attached to this report immediately following the conclusion.

## INVESTIGATION

The investigation substantiated the following allegations:

### **VIOLATIONS OF SMITHSONIAN POLICY – CONFLICTS OF INTEREST**

*O'LEARY engaged in conflicts of interest and created an appearance of conflicts of interest when she issued a contract to [REDACTED]; when she attempted to issue a sole-source contract to a close friend; and when she made an unauthorized commitment of Institution funds to that friend.*

#### Improper Contract with [REDACTED]

The first rule of the Standards of Conduct prohibits giving preferential treatment to any person. The Standards of Conduct further state that "to avoid a conflict of interest or the appearance of a conflict of interest or of favoritism, a proposed contract with [REDACTED] must be referred by the Office of Contracting to a Smithsonian ethics counselor for review and clearance." SD 103 § 7(g).

O'LEARY violated these rules when she issued a [REDACTED] contract in March 2006 to [REDACTED], [REDACTED], [REDACTED]. She had solicited [REDACTED] as one of three competitors to bid on the project and then selected [REDACTED]. (Exhibit 2) [REDACTED] had advised O'LEARY that she should not hire [REDACTED]. She nonetheless executed the contract without first seeking counsel.

A [REDACTED] discovered this issue when [REDACTED] recognized the [REDACTED] on the purchase order [REDACTED]

██████████. The ██████████ and ██████████, subsequently met with O'LEARY to discuss the issue. Following this meeting on April 19, the contract was cancelled by the Deputy Secretary's Office, and no payments were made.

There is no evidence that O'LEARY notified the Office of Contracting (OCon) that the contractor was ██████████ so that OCon could seek clearance or that she sought advice from an ethics counselor. ██████████ stated that O'LEARY "acted surprised that she couldn't do it" during their meeting after the contract was issued and "heavily implied" that she was not aware of the restrictions.

Sources stated that ██████████ had done some pro bono work for SLC and that O'LEARY made it known she "definitely wanted to pay ██████████" for ██████████ work. O'LEARY submitted \$852.15 in travel receipts<sup>1</sup> for trips ██████████ had made to Washington to work on the project, although the trips dated back to November 2005, before the contract was bid or issued. (Exhibit 3)

In e-mail messages after the contract was cancelled and ██████████ could not get reimbursed for costs ██████████ had incurred, O'LEARY wrote to ██████████, "I only tried to help you" and "You had offered to do this pro bono and I stupidly offered to pay you money to try to help you out." (Exhibit 4)

O'LEARY maintains that ██████████ "was providing ██████████ services pro bono" and that she did not realize ██████████'s "involvement" would be inappropriate. She stated the contract was awarded to ██████████ "and the person who was to do the ██████████, ██████████." However, O'LEARY had declined ██████████'s bid for the project and had awarded the contract solely to ██████████, listing herself as the Contracting Officer's Technical Representative (COTR).<sup>2</sup>

O'LEARY also stated her other employers had employed ██████████, so it did not occur to her that this would be a conflict of interest, and that she had not received any training when she began her employment. However, a senior official would be expected to be familiar with the Standards of Conduct and exercise good judgment in such matters.<sup>3</sup>

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<sup>1</sup> ██████████ had noted in an e-mail to O'LEARY that ██████████ was submitting \$1477 in travel expenses ██████████ had incurred.

<sup>2</sup> O'LEARY has not received training as a COTR.

<sup>3</sup> We note that ██████████ states ██████████ held a meeting with O'LEARY soon after she started at the Institution as a new unit head, at which time ██████████ told her to read the Standards of Conduct and contact an ethics counselor with any questions. In addition, she received electronic copies of SD 103 on March 20, 2006 and March 21, 2007 from the Office of General Counsel with the annual SI-1085, Confidential Statement of Employment and Financial Interests form she had to complete.

Lack of Impartiality in Contracting

Section 1 of the Standards of Conduct states that “Smithsonian employees must ensure their conduct does not compromise the integrity of, or public confidence in, the Smithsonian Institution [and] must not engage in private or personal activities that might conflict, or appear to conflict, with SI interests ... such as losing the independence to make impartial decisions on the Smithsonian’s behalf or giving preferential treatment to any person or company.”

O’LEARY violated this prohibition against conflicts of interest and the appearance of conflicts of interest when she submitted a sole-source justification for a contract with a friend who had been seeking to do business with the Smithsonian for some time, [REDACTED].<sup>4</sup> O’LEARY and [REDACTED] routinely communicate via phone, email and text-messaging, plan opportunities to travel and socialize, negotiate work that is not officially contracted, and do favors for each other. [REDACTED]

[REDACTED] O’LEARY submitted a sole-source justification for [REDACTED] totaling [REDACTED],<sup>6</sup> a request that she initiated. One of the reasons O’LEARY provided as justification was that [REDACTED] had been “working with the SLC on an informal pro bono basis” and had special knowledge or experience [REDACTED]. (Exhibit 6) OCon<sup>7</sup> advised O’LEARY that such a relationship was not justification for a sole-source.<sup>7</sup>

O’LEARY also stated as a justification [REDACTED]

<sup>4</sup> O’LEARY stated that she received approval from the Deputy Secretary’s Office to use sole-source. However, she was only told that she could submit a sole-source justification to OCon for review. This is not approval but a statement of the procedures for pursuing a sole-source procurement.

<sup>5</sup> [REDACTED]

<sup>6</sup> There were discrepancies related to the total amount for the contract. O’LEARY attempted to increase the amount of the contract without consulting [REDACTED]. These are addressed in the chronology set forth in Exhibit 11.

<sup>7</sup> OCon advised O’LEARY that the SI does not accept pro bono work that is not documented and that any such work needs to be covered by a gift agreement or MOU cleared through OGC.

<sup>8</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OCon advised the OIG that they would hesitate to write a contract or accept a sole-source justification if they knew that an employee was attempting to contract with a close friend because of the appearance of a lack of impartiality. In such instances, OCon would refer the matter to

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

OGC for review by an ethics counselor and not act on any such request until it was either cleared by an OGC ethics counselor or the person involved recused themselves from any involvement in the bidding or selection process.

O'LEARY maintains that her friendship with [REDACTED] would not cause her to give preferential treatment to [REDACTED] company or cause [REDACTED] to expect anything in return from the Smithsonian. A chronology further detailing the circumstances surrounding this sole-source justification and O'LEARY's specific interactions with OCon and the contractor, illustrating the conflict of interest and the appearance of preferential treatment, is attached. (Exhibit 11)

Unauthorized Commitment Without Procurement Authority

One of the "Fourteen Principles of Ethical Conduct for Smithsonian Employees"<sup>12</sup> states that "Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Smithsonian." Only Smithsonian Institution (SI) employees with a delegation of authority from the Director, Office of Contracting, may sign a contract on behalf of the Institution or tell a contractor to begin work or provide goods. A financial obligation made by someone without a delegation of authority for the appropriate dollar amount is an unauthorized commitment.<sup>13</sup>

O'LEARY entered into an unauthorized commitment of Smithsonian funds when she signed a SOW for [REDACTED] without a delegation of authority. [REDACTED]

[REDACTED]

[REDACTED]

<sup>12</sup> These principles are appended to SD 103, the Standards of Conduct.

<sup>13</sup> OCon Form 104 – Ratification of Unauthorized Commitment.

<sup>14</sup> [REDACTED]

O'LEARY is aware that she does not have procurement authority. She stated in her declaration, "I have never had procurement authority or a purchase card. [C]ontractors that we have hired have gone through the Office of Contracting or the Office of the Deputy Secretary" and "Contracts must be approved by the Office of the Deputy Secretary and OCon."<sup>15</sup>

In addition, when O'LEARY contracted with [REDACTED], she had been advised by OCon that the SOW for the sole-source procurement with [REDACTED] would need to be changed, [REDACTED]. O'LEARY never got the final SOW approved by OCon, nor did she revise it to reflect [REDACTED], prior to having it signed. If she would have done so, OCon would have discovered it was the document with the contractor's edits that still contained the elements of [REDACTED]'s work.

[REDACTED]

[REDACTED], OCon notified O'LEARY that she had made an unauthorized commitment to [REDACTED]. OCon advised her of the corrections that needed to be made to the SOW and that the commitment had to be ratified before any further work could be performed. OCon provided her with a Form 104, "Ratification of Unauthorized Commitment" and asked her to complete it. (*Exhibit 14*)

[REDACTED]

[REDACTED], O'LEARY emailed [REDACTED] and OCon and others stating that the contract should be competed and that she is recusing herself from the selection process.<sup>16</sup>

<sup>15</sup> O'LEARY claimed that "OCon approved the Statement of Work and the sole-source justification and the contract was sent to [REDACTED]'s offices." However, she never received an approved SOW or a contract for signature from OCon, nor was the [REDACTED] aware of any such contract.

<sup>16</sup> [REDACTED]

**VIOLATIONS OF SMITHSONIAN POLICY – GIFTS FROM OUTSIDE SOURCES**

*O'LEARY solicited and accepted gifts, primarily tickets to events and concerts, from prohibited sources and from other sources without seeking clearance.*

Soliciting and Accepting Gifts from Prohibited Sources

The Standards of Conduct prohibit employees from soliciting or accepting any gift “that is or appears to be offered because the employee holds a Smithsonian position or may have influence within the Smithsonian.” They also prohibit soliciting or accepting a gift of any value from prohibited sources, namely “any organization that or person who: (1) is seeking official action by the Smithsonian; (2) does business or seeks to do business with the Smithsonian; or (3) has interests that may be substantially affected by performance or non-performance of the employee’s official duties.”<sup>17</sup> SD 103 § 5 (a). Moreover, the Standards prohibit soliciting the offering of a gift.<sup>18</sup> SD 103 § 5 (c).

OGC ethics counselors state that SI employees cannot personally benefit from offers from any source and consider even board members and sponsors to be prohibited sources. They further state that when an invitation to an event is made and accepted on behalf of the SI, it is the SI that decides on the appropriate person to send to the event and that employees, even directors in a fundraising capacity, cannot personally accept the offers without clearance. These rules were implemented by the Institution to protect its integrity, ensure its impartiality, and avoid conflicts of interest or the appearance of conflicts of interest.

O'LEARY has solicited and accepted gifts from prohibited sources – for-profit companies that were doing business with, or seeking to do business with, the Smithsonian and who had interests that could be affected by O'LEARY's official duties.<sup>19</sup> She has solicited complimentary tickets for herself, not for the SLC, to social functions such as concerts, fashion shows, and music awards, sometimes asking for additional tickets for family and friends.

- [REDACTED] - In August 2006, O'LEARY began working on business proposals with [REDACTED] and [REDACTED] of [REDACTED], who

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<sup>17</sup> The Smithsonian rule parallels the Federal Acquisition Regulation prohibition, 48 CFR § 3.101-2. Employees may receive unsolicited gifts of up to \$50 in value (no more than \$100 aggregate in a calendar year); accept food and refreshments of modest value on infrequent occasions; and accept gifts “when the circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than by the position of the employee.”

<sup>18</sup> In no event may an employee accept a gift in return for being influenced in the performance of an official act.

<sup>19</sup> O'LEARY stated there was “no understanding of return SI business involved or implied” in any of the situations where she received tickets to events. No such understanding is needed to constitute a violation of the gift policies (gifts of any value from prohibited sources or gifts exceeding \$50 in value from other sources).

She tried to negotiate a contract to have [REDACTED], but the agreement was never finalized. Discussions continued about hiring [REDACTED] and about other collaborations through December 2006. On December 7, [REDACTED] asked O'LEARY to "do something together in 07" and O'LEARY responded, "For sure we are doing something in 2007! Let's talk soon." (Exhibit 15) Thus, as of late 2006, [REDACTED] was a prohibited source.<sup>20</sup>

On March 17, O'LEARY received registrations allowing entry to the Latin Billboard Music Conference and Awards show from [REDACTED] in exchange for government hotel rates. [REDACTED] e-mailed her saying, "Hey, if you need some registrations to Billboard, I can get you one or two.... Do you get a good rate at the Four Seasons? Maybe we can make a trade of registrations for a good hotel rate!"<sup>21</sup> O'LEARY responded, "Deal! Let's talk this weekend." On April 4, she directed her staff to make reservations for her as well as for [REDACTED] at the Conrad at the government rate.<sup>22</sup> After the reservations were made, O'LEARY told [REDACTED], "Looks like we will get a rate of \$129 at the Conrad." [REDACTED] later told her, "I saw some photos of the hotel. It looks lovely! Thanks again. I owe you a nice dinner there!" (Exhibit 16) [REDACTED] checked into the hotel on April 23 and was given the government rate of \$129 per night.<sup>23</sup>

O'LEARY sent a message to [REDACTED] from the Latin Billboard awards show saying, "Many thanks, [REDACTED]! You are the best. One q: how do I get one extra ticket?" She sent [REDACTED] another message from the event stating, "[T]hanks again for everything, you are a [REDACTED]! Do you know if the second ticket you gave me which is basically the after party invite with the silver sticker on the back is better than the regular ticket?" (Exhibit 17) While the value of the tickets is irrelevant, as they were obtained from a prohibited source, the cost of this event was \$450 per person.

In June 2007, O'LEARY accepted several [REDACTED] concert tickets from [REDACTED], asking for two for [REDACTED] and four for [REDACTED].<sup>24</sup> (Exhibit 18)

<sup>20</sup> In March 2007, the SLC began negotiating with [REDACTED]

<sup>21</sup> [REDACTED] was in Miami for three nights from April 23-26 to attend the Latin Billboard Music Conference and Awards show, where [REDACTED] were receiving awards.

<sup>22</sup> O'LEARY later advised [REDACTED] that the Four Seasons was unavailable, so they had ended up at the Conrad.

<sup>23</sup> The hotel advised they normally require a government ID to honor the rate and assumed they had failed to obtain one from [REDACTED] at check-in.

<sup>24</sup> E-mails indicate O'LEARY may have asked for an additional four tickets to this concert.

In July, 2007 O'LEARY asked for several guests to be invited to [REDACTED], including [REDACTED], [REDACTED], and [REDACTED] guest. [REDACTED] later e-mailed her to "talk about future possibilities between our organizations." She also accepted a fruit basket [REDACTED] sent her, saying in an e-mail "I received the fabulous fruit basket .... Thank you. Would love to talk about collaboration for next." (Exhibit 19)

[REDACTED], the [REDACTED] she and [REDACTED] began to negotiate about in December 2006, [REDACTED] plus expenses. (Exhibit 20)

- [REDACTED] - In October 2006, O'LEARY met [REDACTED], [REDACTED] of the [REDACTED] and [REDACTED] of [REDACTED], a [REDACTED].<sup>25</sup> In [REDACTED] first e-mail to her, [REDACTED] said [REDACTED] was traveling to the Latin Grammys and said [REDACTED] wanted to pursue work with the Smithsonian when [REDACTED] returned. She replied, "We should definitely find ways to collaborate.... [W]e do a lot of events including a high profile Gala. I am leaving for NY tomorrow as well (actually I am desperate for Latin Grammy tix - let me know if you know how I could possibly get 2!)." (Exhibit 21)

In May 2007, [REDACTED] sent her a news release on the upcoming [REDACTED]. She responded "Awesome!! So excited. By the way, are you sending me a ticket?" [REDACTED] said [REDACTED] would and asked if she needed two, and she told [REDACTED] she did. (Exhibit 22)

- [REDACTED]

On September 21, 2006, O'LEARY asked [REDACTED] for tickets to the Latin Grammys saying, "I am counting on you for some excellent tix!" On October 24, she asked, "How are you doing on my second row tix?" On November 2, when she was able to obtain tickets to the Grammys from [REDACTED], she asked [REDACTED] again saying, "Hey, if there is ANY way you can get me one ticket just one I would be forever grateful, I already have the other too [sic]." On December 29, she asked [REDACTED] for a ticket to the Grammys in Los Angeles. (Exhibit 23)

In December 2006, O'LEARY asked [REDACTED] for Radio City Music Hall tickets for her and [REDACTED] when they were on a trip to New York, and [REDACTED] got them tickets to the Rockettes Christmas show. (Exhibit 24) While the value of the tickets is irrelevant because they were obtained from a prohibited source, the value of the tickets for off-peak performances was \$40-\$90 each, and for peak performances ranged from \$50-\$250 each. It appears they attended a Thursday evening off-peak performance.

<sup>25</sup> [REDACTED]

There may be legitimate reasons for a SLC presence at events for which O'LEARY solicited tickets. For those events, O'LEARY could have purchased the tickets using Institution funds instead of soliciting them from prohibited sources and others. Additionally, if O'LEARY believed that soliciting these tickets was in the best interest of the Institution, she should have sought a waiver of the Standards of Conduct from OGC, which she failed to do.

### Soliciting and Accepting Gifts from Other Sources

Section 1 of the Standards of Conduct prohibits employees from using their Smithsonian employment for private gain and from giving preferential treatment to any person or company. Section 5 specifically prohibits employees from soliciting or accepting the offering of a gift. Gifts include entertainment, favors, lodging, meals, or other arrangements that benefit the employee.

In addition to soliciting gifts from prohibited sources as described earlier, O'LEARY frequently solicited tickets from other sources to social functions such as concerts, fashion shows, and music awards. Again, while a SLC presence at these functions might have promoted networking or donor development, she failed to use proper channels to secure such opportunities. In any event, she solicited tickets for herself, not the SLC, as well as tickets for [REDACTED].

She attempted to obtain tickets to at least ten events from October 2006 to May 2007, including contacting four different individuals for tickets to the Latin Grammys.<sup>26</sup> She sought tickets for [REDACTED] for the \$1250/seat National Hispanic Foundation for the Arts dinner, asking several individuals for tickets to this event. On at least one occasion when she was trying to get additional complimentary tickets, she stated "The Center will pick up the costs if need be" for her [REDACTED] and a personal friend.<sup>27</sup> This was for tickets to the Young Benefactors Fashion Event presented by the Smithsonian Associates. She had more guests than the number of tickets she could receive as a sponsor of the event. (*Exhibit 25*)

O'LEARY solicited tickets and hotel deals from an individual who works for [REDACTED], [REDACTED]. In September 2006, O'LEARY had contracted with [REDACTED], and they were paid [REDACTED] for the contract. In April 2007, O'LEARY asked for a ticket to [REDACTED], saying "Also, can I get 2-4 extra tix (am willing to pay if necessary)?" For this trip, O'LEARY had also asked [REDACTED] if [REDACTED] could get her "a good rate at the Conrad [Hotel]." In September 2007, O'LEARY again asked for help finding lodging, and [REDACTED] found her a room for \$407. When O'LEARY said she thought it was going to be \$347, [REDACTED] told her, "Honey, I'll pay the 70 dollar [sic] difference. No problem."<sup>28</sup> (*Exhibit 26*)

<sup>26</sup> Tickets to the Latin Grammys cost from \$50-\$600 each.

<sup>27</sup> The cost of the tickets was \$45 per person.

<sup>28</sup> It is unknown if this request was for personal travel or someone else, as O'LEARY had no official travel to Miami immediately following the date of this request.

O'LEARY often returned the favors by providing complimentary tickets to Smithsonian Latino Center events that were designed to raise funds for the Center. For example, in addition to the prohibited sources previously mentioned, she provided complimentary tickets to the 2006 and 2007 SLC Galas to several individuals who had provided her complimentary tickets to their events and to individuals she had requested complimentary tickets from.<sup>29</sup> A list of such known transactions is attached. (*Exhibit 27*)

O'LEARY did not contact the Office of General Counsel to seek guidance on these activities. OGC states they do receive requests from other employees to review the appropriateness of gifts being offered, illustrating that employees are aware of the requirement to obtain approval before accepting gifts of value. One recent request related to the acceptance of event tickets. The [REDACTED] to the [REDACTED] of the National Zoo was offered complimentary tickets to the [REDACTED] by [REDACTED]. OGC advised the employee not to accept the tickets because their aggregate value exceeded the \$50 limit.

Also, O'LEARY did not report any gifts, hospitality, entertainment or reimbursements on her Financial Disclosure Statement Form (SI 1085) for 2006.

#### Accepting Travel Expenses from a For-Profit Source Without Clearance

Section 11 of the Standards of Conduct requires employees to obtain advance clearance from OGC for official travel where any part of the cost is to be paid for or reimbursed by a for-profit entity. The SI Travel Handbook also requires OGC approval for the acceptance of payments from a non-federal source or from a for-profit company and states that "acceptance of reimbursed expenses shall comply strictly with the Standards of Conduct."

The Federal Travel Regulation (FTR), which the Smithsonian follows, allows for a non-federal source to pay for travel expenses that are not pre-approved if the offer comes after travel has begun, and the traveler and agency had no prior knowledge of the offer. When this occurs, the traveler must request agency authorization for acceptance within seven working days after the trip ends. 41 CFR § 304-3.13.

In April 2007, O'LEARY allowed a for-profit company, [REDACTED], to pay for her hotel expenses while attending [REDACTED], without seeking approval and clearance from OGC. [REDACTED] owns [REDACTED] partnership with [REDACTED]. She was working with [REDACTED] to obtain [REDACTED].<sup>30</sup>

<sup>29</sup> In 2007 O'LEARY limited the number of complimentary tickets to the Gala because of complaints about the large number offered in 2006 and because of the new guidelines being drafted for the Governance Committee.

<sup>30</sup> [REDACTED]

O'LEARY had multiple hotel reservations for this trip. She had two reservations in her name at the Conrad Hotel from April 17-22 at a rate of \$249 a night. One of these reservations was cancelled and one was a no-show.<sup>31</sup> The hotel charged \$249 plus tax to a credit card used to guarantee the room, and the hotel assumed it was her card.<sup>32</sup> She also had a reservation at the conference hotel, Four Seasons, from April 19-22, the first night of which was also a no-show. [REDACTED] was charged for the first night no-show along with the two nights the room was occupied. O'LEARY paid for miscellaneous spa and salon expenses charged to the room for the remaining two nights, but [REDACTED] paid for the costs of the premier bay view room at \$385 per night plus taxes, for a total of approximately \$1300.<sup>33</sup> A friend of O'LEARY's joined her for the weekend, and documentation indicates her friend checked into the room at the Four Seasons on the 20<sup>th</sup>. (Exhibit 28)

**VIOLATION OF SMITHSONIAN POLICY – IMPROPER CLAIM FOR TRAVEL ALLOWANCE**

*O'LEARY improperly filed a claim and received reimbursement for travel expenses after she had received cash for those expenses from the trip's sponsor.*

The FTR prohibits employees from accepting monetary payments in the form of cash from a non-federal source. 41 CFR § 304-6.1. The FTR further states that Meals and Incidental Expenses (M&IE) rates must be adjusted for meals furnished to the traveler other than those furnished by a common carrier or complimentary meals provided by a hotel. 41 CFR § 301-11.17.

The SI Travel Handbook does not specifically address this issue, but it does require all individuals traveling on SI business to account for any gratuity or benefit received from private sources. All expenses received are the property of the SI and may not be retained by the individual. It further states that requesting or receiving payment for an expense that has not actually been incurred is considered fraud, and as such is a violation of Section 4 of the Standards of Conduct which states that employees must ensure their conduct does not violate Federal laws.

O'LEARY filed a claim and received reimbursement for M&IE expenses that she did not incur, as she had received cash for her expenses from an outside source.

In [REDACTED], O'LEARY and [REDACTED], [REDACTED], went on a joint business trip to [REDACTED]. They were hosted by [REDACTED].

<sup>31</sup> O'LEARY traveled to Miami on April 17 and apparently stayed at [REDACTED]'s home at least on the 17<sup>th</sup> and 18<sup>th</sup>. She did not claim any lodging expenses on her travel voucher for this trip.

<sup>32</sup> The number does not match one of the credit cards known to be in O'LEARY's name that she used during other travel, but it cannot be confirmed that it was not her card. However, this is also the date she asked [REDACTED] to get her a room at the Conrad, discussed previously in this report.

<sup>33</sup> The hotel confirmed the room was paid for by [REDACTED].

from [REDACTED], and their airfare and lodging expenses were paid for by the [REDACTED].<sup>34</sup> [REDACTED]. O'LEARY planned to extend her stay [REDACTED], as [REDACTED] and [REDACTED] were joining her for several days. Before the trip, the [REDACTED] e-mailed her to confirm her flights and clarified she was welcome to stay longer but that they would not pay for any expenses past [REDACTED]. (Exhibit 29)

When O'LEARY and [REDACTED] arrived, they each signed for and were given eight hundred and ten euros (810€) in cash, or approximately \$1,028, to cover meals and incidental expenses during their stay. (Exhibit 30)

When they returned and filed their travel vouchers for reimbursement, [REDACTED] did not claim any M&IE expenses from [REDACTED].<sup>35</sup> [REDACTED] stated to the OIG that [REDACTED] had received money from the [REDACTED] to cover [REDACTED] meals while [REDACTED] was [REDACTED], so [REDACTED] had filed a no-cost voucher for that portion of [REDACTED] trip.

O'LEARY did claim M&IE expenses on her travel voucher from [REDACTED] for a total of \$1242.00. She did not adjust her per diem rate to account for the cash allowance she had received from the [REDACTED], nor did she account for the benefit received from the outside source. She electronically signed her travel voucher certifying the expenses were "true and correct... and that payment or credit has not been received by me." (Exhibit 31)

**VIOLATIONS OF SMITHSONIAN POLICY – TRAVEL POLICY – MISUSE OF TRAVEL CARD**

***O'LEARY misused her Smithsonian-issued travel card when she failed to pay her travel card balance timely; when she used her travel card for personal purchases; when she failed to use her travel card on official business; and [REDACTED].***

The SI Travel Policy requires individuals on official travel for the Institution to abide by all travel regulations. These regulations require payment of balances on the Smithsonian-issued Citibank travel card (which in turn requires timely completion of travel documentation, also mandated by the travel policy); no personal or non-travel use of the card; and no use of personal credit cards for official travel. "Cardholder account delinquencies, for which avoidance was within the control of the cardholder, and/or use of a travel card for expenses not related to out-of-area travel, constitute misuse and/or abuse of the travel card." O'LEARY violated these rules on multiple occasions.

<sup>34</sup> The Standards of Conduct and the 2004 SI Travel Handbook had conflicting information with regard to the need for OGC approval for "travel reimbursements from a non-Federal source," therefore approving officials were approving such travel if it did not involve a for-profit entity or foreign government.

<sup>35</sup> September 29 was an official travel day for [REDACTED], as [REDACTED] was continuing on to another location.

## Failure to Pay Travel Card Balance Timely

Travel card holders must submit properly completed travel vouchers within five business days after travel. Furthermore, the travel card holder, not the Institution, is personally liable for all charges on the travel card. The Standards of Conduct require employees to pay debts properly and timely. These rules, and other travel rules, are regularly reiterated to all employees and supervisors via email announcements and memoranda from the Deputy Secretary and the Chief Financial Officer (CFO).<sup>36</sup>

O'LEARY has consistently been past due with payments to her travel card. From January 2006 through August 2007, she has been 0-31 days past due 10 times; 31-60 days past due 6 times; over 60 days past due 3 times; and over 90 days past due one time. Her card was suspended for non-payment to Citibank three times in 2007 (January, April and August).

Beginning in early 2006, O'LEARY was repeatedly advised of the standard travel procedures and the requirement to submit travel vouchers in a timely manner in order to be able to pay Citibank on time.<sup>37</sup> On April 27, 2007, during her second travel card suspension, [REDACTED] in the Deputy Secretary's Office told O'LEARY to "provide all receipts immediately" and that the goal was "to have only one voucher at a time pending." (Exhibit 32) When O'LEARY's card was pending suspension or suspended, she told the TMO and the Deputy Secretary's office that she could not or would not pay the travel card until she was reimbursed by the Smithsonian. (Exhibit 33)

O'LEARY has stated the reason for these suspensions and for her failure to pay her card was the "severe shortage of staff" at the SLC which caused a "backlog of processing and reimbursement by the Smithsonian." She further stated that she "submitted the corresponding bills and receipts" to [REDACTED] "directly after her trips."

Contrary to O'LEARY's statements, it appears the primary reason she was not reimbursed quickly for the travel expenses charged to her travel card – and therefore why she claims she cannot pay her outstanding balances timely<sup>38</sup> – was her failure to submit the necessary bills and receipts in a timely fashion. Vouchers are paid within a few days of being approved. O'LEARY often did not submit her travel documentation until weeks after her trips and did not always have all of the necessary receipts, so her staff had to obtain them from [REDACTED] or get copies

<sup>36</sup> SI Wide e-mail announcements were sent out in September 2005, March 2006, and May 2006. [REDACTED] sent a reminder on the policy September 27, 2006 titled "Adherence to SI Travel Policies." The [REDACTED] sent the SI Travel Policy out again on March 23, 2007 and O'LEARY forwarded it to her staff stating, "Please review and take note." This was updated and sent to all travel card holders again on May 22, 2007 in CFO Bulletin #10-006 titled, "Travel Card Misuse and Abuse."

<sup>37</sup> In August 2007, when O'LEARY's travel card was suspended for non-payment, she had travel dating back nearly five months that she had not been reimbursed for, because she had not yet submitted the paperwork for processing.

<sup>38</sup> We note that she was obligated to pay her Smithsonian-issued travel card balance whether or not she had already been reimbursed by the Institution.

from the vendors. In addition, there were non-reimbursable expenses and extra charges that needed special approval upon her return, such as hotel rooms that were not cancelled in time or flights purchased outside the travel office (which is forbidden by Smithsonian travel policy).<sup>39</sup>

E-mail correspondence between [REDACTED] and [REDACTED] demonstrates that she did not submit timely and complete information necessary to fill out travel vouchers and thus get reimbursed. For example, on August 16, 2006, [REDACTED] advised [REDACTED] that [REDACTED] was still awaiting receipts for a June 26 trip to Los Angeles that was on [REDACTED] charge card before [REDACTED] could complete a voucher. The same issue occurred on December 5, 2006 for a November 16 trip to New York City. A March 6, 2007 e-mail exchange illustrates that [REDACTED] was still waiting for receipts from a trip to Los Angeles that O'LEARY had completed four weeks earlier on February 13. [REDACTED] advised [REDACTED] that some of the "taxi receipts were not filled in" and asked if [REDACTED] knew where the Hilton hotel receipt was. On September 10, 2007, she still had not submitted the receipts for a trip she had taken to Colombia on August 18. (Exhibit 34)

In August 2007, at the time of her last travel card suspension, O'LEARY had pending travel vouchers dating back to March 19, a total of ten trips that had not yet been processed, three of which were in the old Travel Manager System (TMS). When O'LEARY lost [REDACTED] in March 2007, there was no one else in her office trained in TMS, so her last three trips were to be submitted to the Deputy Secretary's Office for processing.

[REDACTED] stated that O'LEARY was aware the vouchers for these older authorizations would have to be prepared by their office. [REDACTED] further confirmed that the paperwork for these vouchers (for travel that occurred in March and April) was not submitted to [REDACTED] office for processing until early September. Therefore, the delays in processing these vouchers cannot be attributed to staff shortages at the SLC.<sup>40</sup>

[REDACTED]

<sup>39</sup> O'LEARY often placed non-reimbursable expenditures on her travel card, such as expensive dining or entertaining expenses and spa appointments. These charges resulted in the payments due to be significantly higher than the amount reimbursed. These expenditures will be specifically addressed later in this report.

<sup>40</sup> The [REDACTED] of OCon stated that on average, fewer than ten travel card accounts a month are delinquent, as an account is only suspended after the payment due date passes 36 days. The travel management office maintains that if vouchers are filed in a timely manner, there should never be an issue of having the funds to pay balances due before an account is suspended.

<sup>41</sup> [REDACTED]

### Personal Use of Travel Card

The travel card agreement that every travel card holder signs, as well as the SI Travel Handbook (11.1.9), prohibit the use of the travel card for purchasing goods or services for personal use or for the benefit of the cardholder or other individuals or for making general purchases not related to official business travel. O'LEARY has received notice of this policy numerous times.<sup>42</sup>

O'LEARY has violated these rules repeatedly. She placed personal expenses on her travel card while traveling on several occasions. She has also used her travel card locally for food and taxi expenses when not on official travel. Such expenses for 2006<sup>43</sup> are itemized in an exhibit to this report and include several salon, spa and gift shop charges up to \$350 each and barbershop and room service charges for [REDACTED].<sup>44</sup> (Exhibit 35)

### Failure to Use Travel Card on Official Travel

The SI Travel Handbook requires all employees to use their designated travel card while traveling on official business and for all expenses connected with official Smithsonian travel. It further states that employees must obtain a written exemption from OCon to place travel expenses on personal charge cards. OCon has no record of any requests from O'LEARY to use her personal credit cards on travel and noted that such permission would likely not have been granted.

O'LEARY submitted nearly three thousand dollars in charges that were billed to credit cards other than her travel card while on official travel in 2006. These charges were either on her personal credit cards or on [REDACTED] credit cards when [REDACTED] traveled with her. [REDACTED] sometimes e-mailed [REDACTED] to discuss charges on [REDACTED] personal cards that needed to be reimbursed. A summary of these charges is attached to this report. (Exhibit 36)

[REDACTED]

[REDACTED]

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<sup>42</sup> See footnote 36.

<sup>43</sup> The itemization was completed for 2006 only because at the time of this investigation, O'LEARY's travel vouchers from March 2007 on were not yet completed, so the receipts were not available for review. In addition, O'LEARY's travel card had been suspended three times by August 2007 and therefore she did not use it.

<sup>44</sup> Because no interest or fees accrue on the Smithsonian-issued travel cards, she was in effect receiving interest-free loans on those personal items charged to her card when she failed to pay the card balance on time.

[REDACTED]

[REDACTED]

**VIOLATIONS OF SMITHSONIAN POLICY – PERSONAL USE OF SI PROPERTY AND RESOURCES**

*O'LEARY misused Smithsonian-issued property and resources on numerous occasions by [REDACTED] and by using Institution funds for courier service for deliveries of non-work related items.*

Section 12 of the Standards of Conduct states that employees shall not use Smithsonian property of any kind for other than officially approved activities. Property is defined as “all assets” and includes funds, facilities, equipment, supplies, staff time and services.

Use of Courier Services

O'LEARY has used the Institution's courier service for personal, non-work related items numerous times.

In her statements, O'LEARY said she “was not aware of using the Institution's courier service for personal use.” She stated, “I have only sent the courier service to my house to pick up my BlackBerry or something I forgot at home and needed for work or a work-related event, such as a folder or bag containing business papers.” O'LEARY stated “I believe it is in the best interest of the Institution to send the service versus missing a flight or traveling without my BlackBerry.” She could not recall any specific instances of the courier service picking up or delivering dresses other than she “may have been invited to an event and needed appropriate clothing” for the evening.

A review of the courier service's records revealed there were eight pick-ups at her residence and four deliveries to her residence between December 9, 2005 and February 27, 2007. [REDACTED] These trips totaled \$219.80 and included personal items such as medication and clothing. (Exhibit 38)

1 Page Withheld

Portion of the Report of Investigation

Exemptions 2 and 7(C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**OTHER QUESTIONABLE CONDUCT**

*O'LEARY engaged in other conduct that was questionable or reflected poor judgment, creating an appearance of impropriety and of using her Smithsonian employment for private gain, potentially undermining public confidence in the Institution.*

Section 1 of the Standards of Conduct states Smithsonian employees must ensure their conduct does not compromise the integrity of, or public confidence in, the SI, and must not engage in private or personal activities that might conflict, or appear to conflict, with SI interests, such as losing the independence to make impartial decisions on the Smithsonian's behalf or giving preferential treatment to any person or company.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45 [REDACTED]

PREPARED BY: [REDACTED]

CASE NUMBER: [REDACTED]

*Exemption 2*

*This document contains sensitive and confidential information and is not to be distributed or copied without the written permission of the Office of the Inspector General.*

2 Pages Withheld

Portion of the Report of Investigation

Exemptions 2 and 7(C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Extravagant Travel and Other Questionable Expenditures

*Hotel Expenditures*

The SI Travel Handbook (pursuant to SD 312) states it is the traveler's responsibility to practice the same economy while traveling that a prudent person would if conducting personal business. Requests to claim actual expenses that exceed the per diem rates are allowed if authorized in advance and justified in writing and cannot exceed 300% of the per diem rate. O'LEARY has received numerous announcements on the Smithsonian's travel policy since beginning her employment. (*Exhibit 47*)

O'LEARY has incurred excessive travel expenses, consistently traveling last minute at actual expense rather than obtaining per diem, staying primarily at luxury resorts in upgraded rooms and suites, and frequently using car services

OIG agents asked O'LEARY if she stayed at hotels offering a government rate when she traveled or if trips were done on actual expenses, and she stated that it was a combination of both. She stated there were many reasons why actual expenses were used, including meeting locations, board members asking her to stay at a particular hotel, unavoidable last minute trips or a lack of availability. O'LEARY stated she has given her staff direction with regard to travel expenditures, telling them "We need to be prudent and to try to stay at the hotels where we get the best rate."

<sup>49</sup> [REDACTED]

A review of O'LEARY's domestic travel vouchers from January 2006 through August 2007<sup>50</sup> showed that her lodging costs exceeded the allowable per diem rates 90% of the time (23 out of 24 trips). Her lodging costs were \$100 or more over the applicable per diem rate 45% of the time (11 out of 24 trips), [REDACTED]. A comparison of several executives who travel regularly showed that O'LEARY's lodging costs regularly exceeded those of her counterparts. (Exhibit 48) Her insistence on luxury accommodations is not consistent with prudent safeguarding of the Institution's resources.

O'LEARY's travel was primarily to Miami, New York and Los Angeles. She normally stayed at four-star and five-star hotels, often in upgraded rooms with ocean views, studios and suites, and Jacuzzi suites. In addition, documents show there were times she planned a trip well in advance but did not make her travel arrangements until the last minute, decreasing the possibility of obtaining a reasonable rate.<sup>51</sup>

One example of this was a trip to the Latin Grammys in November 2006. O'LEARY asked her staff if they wanted to attend this on August 16, but she did not make arrangements until the last minute and paid \$519 a night for rooms.<sup>52</sup> Another example was a trip to the Grammys in Los Angeles in February 2007. O'LEARY and her staff planned to travel to Los Angeles for the event as early as December 2006, but did not attempt to secure rooms until a couple of weeks prior to leaving, paying up to \$510 a night. (Exhibit 49)

Sources stated and documents show that O'LEARY was very particular about her lodging, normally insisting that she be booked at a Conrad, Ritz Carlton or Four Seasons, even if they did not offer a government rate.<sup>53</sup> There were also times when O'LEARY would refuse to stay at a hotel offering the government rate or a comparable rate.

- On a December 7-9, 2006 trip with [REDACTED] to attend the Art Basel event in Miami, O'LEARY stayed in an executive suite at a Ritz-Carlton for \$499 a night while [REDACTED] stayed less than half a mile away at a Doubletree for \$219 a night. [REDACTED] accompanied her on this trip, which was two days after [REDACTED]. The per diem rate was \$107, [REDACTED]. (Exhibit 50)
- On a February 8-13, 2007 trip to the Grammys in Los Angeles, [REDACTED] was able to book the Millennium at government rate downtown near the event, but O'LEARY

<sup>50</sup> This travel encompasses twenty-four domestic trips with lodging expenses. It does not include international travel.

<sup>51</sup> Lodging reservations could have been made in advance to obtain a good rate and then cancelled if not used.

<sup>52</sup> This was not an instance where O'LEARY was waiting to see if she could obtain tickets to the event, as she traveled to New York on November 1 without having tickets to the event being held on November 2. O'LEARY was not able to obtain the tickets until the day of the event.

<sup>53</sup> Evidence supporting this is presented in various sections of this report.

insisted on staying in Beverly Hills. O'LEARY made reservations at three different hotels in Beverly Hills before settling on one and paid \$510 and \$319 a night for two different hotels used during this trip. The per diem rate was \$110, [REDACTED]. In an e-mail, [REDACTED] explained to her that the hotels [REDACTED] booked were far from the Grammys location and would need to provide justification to the Deputy Secretary's Office for exceeding the government rate. O'LEARY responded, "You can say that Hollywood is going to be more convenient for meetings and is where [REDACTED]<sup>54</sup> is likely staying."<sup>55</sup> (Exhibit 51)

Other examples of O'LEARY's luxury accommodations while on official travel include:

- March 9-13, 2006 ~ 4 nights ~ Ritz Carlton Key Biscayne ~ ocean view studio ~ \$449.

[REDACTED] accompanied her on this trip. [REDACTED] booked this room the morning of their departure on March 9 when O'LEARY already had reservations at the Wyndham Miami Beach Resort for \$356 a night, where her Board members were staying for a meeting. O'LEARY cancelled the reservation at the Wyndham late, on the morning of their departure, causing her to be billed for two hotels the first night.<sup>56</sup> The per diem rate was \$144, [REDACTED].

When [REDACTED] received the new reservation from [REDACTED] on the morning of their departure, [REDACTED] asked O'LEARY if she wanted to stay there and advised her "We have already lost one night's stay." O'LEARY responded, "Yes, I'll eat the night, though I am going to try to get out of it." (Exhibit 52)

O'LEARY requested and got reimbursement for both hotels on her travel voucher. She stated in an e-mail to the travel office, "For further clarification, the room was cancelled the same day the reservation was made and before we got an e-mail confirmation." In fact, the reservation at the Wyndham had actually been made on March 7, two days prior to the cancellation on March 9; and the e-mail confirmation had been received by O'LEARY's office on March 7, two days prior to the cancellation.<sup>57</sup> (Exhibit 53)

<sup>54</sup> [REDACTED] is a [REDACTED] of the [REDACTED].

<sup>55</sup> During this trip O'LEARY hired Academy Limousine to transport her downtown and back for \$550. This is the sedan charge [REDACTED] refused to pay as [REDACTED] did not believe it was a legitimate expense. This is discussed further later in this report.

<sup>56</sup> The hotel change cost the SI an additional \$923 (\$356 for the cancelled room plus \$567 for the upgraded hotel).

<sup>57</sup> The e-mail confirmation was placed in O'LEARY's travel folder so she had the hotel information.

- December 13-15, 2006 ~ 2 nights ~ Four Seasons Miami ~ premier bay view room ~ \$450.

Documents show that O'LEARY planned this trip as early as November 6, stating in an e-mail "Am coming to Miami on Dec 13 for People event." She directed [REDACTED] to book this room on November 30 after [REDACTED] advised this hotel did not have a government rate available, and there is no indication she instructed [REDACTED] to look elsewhere. The per diem rate was \$107, [REDACTED]. (Exhibit 54)

- February 21-23, 2007 ~ 2 nights ~ Regent South Beach ~ private Jacuzzi patio suite ~ \$450.

The maximum per diem rate for lodging at this location at this time of year was \$157; [REDACTED]. (Exhibit 55)

Some of O'LEARY's travel has created a perception of impropriety or that it was fabricated because it appeared to be planned around major events such as the Grammys or involved travel to Miami over her birthday weekend, travel over holidays, and last-minute travel to Miami on the weekend of [REDACTED].

For example, O'LEARY was on official travel to Miami from Friday to Monday on her birthday weekend in March 2007 to "cultivate talent for the Gala." [REDACTED] was traveling with her, and e-mail messages in the days preceding the trip indicated that it was not necessary for O'LEARY to travel on Friday for business. When friends reminded her [REDACTED] about an event in Washington on Friday evening, O'LEARY suggested [REDACTED] that they could travel on Saturday morning instead. In addition, O'LEARY stated in other e-mails to friends, "Can't wait to get some R and R this weekend in Miami" and "I'm in Miami where I chose to spend my birthday." (Exhibit 56)

Another instance that raised questions was O'LEARY's proposed trip to visit the Smithsonian Astrophysical Observatory (SAO) in Boston over the Thanksgiving holiday in 2006. [REDACTED] live in the Boston area. This particular travel authorization was flagged by the Deputy Secretary's Office as the travel period spanned Thanksgiving and the purpose of the trip was a one-person meeting.

O'LEARY advised [REDACTED] in a November 10 e-mail that she had been "trying to meet with [REDACTED] for several months" and that [REDACTED] was traveling on Wednesday, but she was "traveling on Tuesday specifically for the appointment at SAO." However, documentation related to this trip shows that O'LEARY intended to travel on Wednesday and return on Friday after Thanksgiving, including a November 5 e-mail to [REDACTED] asking [REDACTED] to arrange a meeting with [REDACTED] on "Wednesday or Friday." Government airfare was only available on Tuesday, so the travel authorization was requested from Tuesday to Friday. [REDACTED] informed O'LEARY the request was approved but that she would be in a leave status from Wednesday through Friday and would not receive per diem for those days. (Exhibit 57) O'LEARY ultimately

anceled the request and traveled personally [REDACTED]. She has not rescheduled the trip or pursued the appointment with SAO since then.

O'LEARY also failed to use the Federal Tax Exemption Forms, which exempt SI employees from local hotel taxes that amount to 13%-14% additional cost on a hotel bill. She first received a reminder to utilize the form on June 14, 2006 in an e-mail from the Deputy Secretary's Office, after a review of her travel vouchers. (*Exhibit 58*) Taxes are exempted in the three areas she routinely travels to (Miami, New York and Los Angeles).

O'LEARY stated she used the Tax Exemption Form when she traveled, although there were times when she just simply forgot. She further stated [REDACTED] was good about putting a form in her travel folder.

A review of O'LEARY's travel vouchers illustrated that she essentially never used the Tax Exemption Form, incurring hotel taxes of \$1576 from January 2006 through August 2007. [REDACTED] even faxed the completed form to her hotels on several occasions asking her to sign and present it at checkout. On one such occasion, O'LEARY returned an unsigned form with her voucher saying, "sorry did not do this." (*Exhibit 59*) She did get a tax exemption two times when she was traveling with staff, and the one other time O'LEARY requested a tax exemption, she was reimbursed for expenses she did not incur.<sup>58</sup> (*Exhibit 60*) A review of the hotel taxes O'LEARY incurred compared to several other unit and museum directors who travel routinely revealed she had paid and claimed reimbursement for at least twice as much in lodging taxes as the other directors in 2006. (*See Exhibit 48*)

### *Car Service Expenditures*

O'LEARY stated her office typically uses taxis when they travel. She stated that the use of sedan services has been limited, especially in the past year.

[REDACTED] stated [REDACTED] counseled O'LEARY on the use of sedan services when one of the bills was brought to [REDACTED] attention. [REDACTED] stated [REDACTED] denied the payment and advised O'LEARY that she needed justification for such expenses in the future. [REDACTED] could not recall the date of that meeting, but it appeared to be after O'LEARY's trip to the Grammys in February 2007 when she had hired a Lincoln Towncar to take her from her Beverly Hills hotel to a movie premiere, wait, and return her to the hotel. The bill was for 8 hours totaling \$550, and while it was charged to O'LEARY's travel card, it was not reimbursed. (*Exhibit 61*)

The use of car services has declined in recent months. Prior to this, O'LEARY had once hired a limousine to take SLC Board members from the Castle across the mall to the Natural History

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<sup>58</sup> On December 15, 2006, O'LEARY asked the Four Seasons Miami for the tax exemption. However, for her voucher she submitted her original hotel bill for reimbursement which did not show the removal of the \$117 in taxes. This was discovered during the investigation when the hotel charges on her travel card were less than the hotel charges submitted on her travel voucher. We assume this overpayment was an oversight and should be refunded to SI.

Museum for a meeting. The policy for transporting the National Board and the Board of Regents has been to hire a combination of larger motor coaches and/or smaller shuttle buses. A Smithsonian van and driver are used to transport the Regents and their guests from hotels to the various board activities. The Office of Special Events and Protocol (OSEP) states they have never hired private sedan companies for this purpose.

O'LEARY hired a sedan service in New York to take her from the airport to her hotel eight miles away and back for a total of \$318. She often hired a sedan service in New York and had the driver wait while she attended meetings, many times being charged for up to eight hours, and there was a one-day charge of \$1,068. She rented two sedans during her November 1-3, 2006 trip to the Latin Grammys totaling \$1,045.<sup>59</sup> On one occasion when she had meetings on the Hill with [REDACTED], O'LEARY hired a limo and directed [REDACTED] to sit with the driver all day "in the event she needed [REDACTED]." (Exhibit 62) A review of the costs O'LEARY incurred for car services in 2006 (\$3,053), compared to several other unit and museum directors who routinely travel, revealed she was the only one who used car service, with two exceptions, [REDACTED] (a total of \$473) and [REDACTED] (a total of \$495).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>59</sup> During this trip to New York with her staff, O'LEARY lost her travel card and had [REDACTED]

O'LEARY's original authorization only allowed for \$150 in taxi costs and no sedan services, so her authorization also had to be amended. Lastly, O'LEARY stated she got the cars for the safety of her and her staff, so they were not out hailing taxis at night. However, both sedan services began in the early afternoon.

[REDACTED]

[REDACTED]

Using Smithsonian Institution Funds to Move Furniture to Residence

[REDACTED], O'LEARY held a fund-raising event, [REDACTED], [REDACTED] gave approximately 40 pieces of outdoor furniture to the SLC for use at such events. [REDACTED] delivered the furniture on the day of the event. O'LEARY did not document the donation to the SI. Following the event, the furniture was stored in the Arts and Industries (A&I) Building with other Smithsonian property. In the spring of 2006, units that had been using the A&I Building for storing items were told to move their property elsewhere.

[REDACTED] advised her that the furniture should be given to the General Services Administration (GSA). O'LEARY did not want to give it to the GSA, saying she would use it for other events, but it has not been used again. There was no other storage at the SI, and O'LEARY did not want to pay to store it, so she decided to store it at her residence. On June 9, 2006, O'LEARY directed [REDACTED] to use the Center's purchase card to hire movers to move it to her residence at a total cost of \$641. (Exhibit 65) Federal funds were used for the move.

O'LEARY did not seek counsel from the OGC or her supervisor prior to making this decision. The [REDACTED] who [REDACTED] was aware of the move being made on the purchase card, but did not think to question it. [REDACTED] in the Deputy Secretary's Office told OIG agents that [REDACTED] was not aware of any donated furniture being moved to O'LEARY's residence, but that if [REDACTED] had been made aware of it, [REDACTED] would not have allowed it. O'LEARY now states "We will ultimately need to dispose of the furniture."

## CONCLUSION

The investigation revealed that O'LEARY has not always acted in the best interests of the Smithsonian. Her conduct has violated the basic ethical rules of the Institution.

The Smithsonian's business must be conducted in a manner above reproach, with complete impartiality and with preferential treatment toward none, to paraphrase the Federal Acquisition Regulation. Transactions relating to Smithsonian funds require impeccable conduct. Thus, Smithsonian employees, especially those in leadership positions, should strictly avoid even the appearance of a conflict of interest in relationships with contractors and those seeking to do business with the Institution. O'LEARY seemingly ignored these principles.

At no time did O'LEARY consult with the ethics counselor to seek advice on or permission for any of her activities. Indeed, she could have requested a waiver from some of the Standards of Conduct if she believed they caused undue hardship or were not in the best interests of the Institution.<sup>60</sup>

O'LEARY was advised when she was selected for her position that the Secretary's Office expected her to provide leadership in the areas of fiscal administration and management of the Center's assets. As such, she has a fiduciary responsibility to prudently manage the Institution's financial resources and a personal responsibility to set an example of high moral and ethical behavior. Her conduct, however, creates the perception that she is using her position for private gain, particularly through her solicitation of gifts and her excessive travel expenditures. This perception compromises the integrity of, and undermines the public's confidence in, the Institution.

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<sup>60</sup> Section 17 of the Standards of Conduct provides that "[e]mployees may request that the ethics counselor waive application of these Standards on the grounds that their enforcement would be contrary to the best interests of the Smithsonian or would cause undue hardship."