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Audit of the Department of Justice's Use of Extended Temporary Duty Travel

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AUDIT OF THE DEPARTMENT OF JUSTICE'S USE OF EXTENDED TEMPORARY DUTY TRAVEL

EXECUTIVE SUMMARY

Department of Justice (DOJ or Department) employees are often required to perform official travel on either a domestic or foreign basis. If an employee is traveling more than 50 miles away from his or her permanent duty station to the same location, for longer than 30 calendar days, the employee is considered to be in extended temporary duty (ETDY) status and can be restricted to a reduced amount of authorized travel reimbursements to allow for the reduction of costs associated with traveling for an extended period.

Our objectives in this audit were to evaluate whether DOJ: (1) has sound ETDY policies and practices that promote cost effectiveness, (2) has adequate tracking systems and documentation for ETDY expenditures, and (3) is making appropriate use of ETDY. To accomplish our objectives, we interviewed component officials, analyzed available data to create a universe of ETDY travel, reviewed memoranda, and examined travel records.

We focused on the following DOJ components - the Criminal Division, the Executive Office for United States Attorneys and the U.S. Attorney's Offices (EOUSA/USAO), the Federal Bureau of Investigation (FBI), and the National Security Division (NSD) - that made significant use of ETDY. Based on the limited data available, we estimated that these components spent more than $54 million on 4,788 ETDY events during our audit review period. We designed our audit to examine the policies, procedures, tracking, and use of ETDY within these components during fiscal years (FY) 2012, 2013, and the first quarter of 2014. In summary, we found that:

- While DOJ did have an ETDY policy from 1998 in place, it was outdated and did not include thorough or current guidance to Department components sufficient to ensure that they utilized ETDY in the most cost-effective manner.

- The components we reviewed did not consistently interpret and implement existing DOJ ETDY policy. We also identified concerns related to the taxability of ETDY reimbursements, including inconsistent application of tax exemptions and policies.

- DOJ components tracked ETDY in only a minimal and manual manner, which led to various errors and a lack of knowledge by JMD and the components of ETDY activity. When we attempted to identify a universe of ETDY activity during our review period and compared this to the results of a 2013 JMD data call, we found incomplete and inconsistent reporting. Better tracking and monitoring of ETDY would help managers better utilize Department resources efficiently.

To assess the use of ETDY in the audited components, we reviewed $3.29 million in ETDY travel expenditures during our audit review period from a judgmentally selected sample of 70 ETDY travelers. We identified instances where components did not appropriately use ETDY. For example, we found instances where Criminal Division travelers went numerous times to the same location for consecutive periods and managers authorized this as regular, non-ETDY travel. Conversely, we identified at least two travelers within the Criminal Division who spent very little time at their ETDY locations, despite incurring significant ETDY costs. Further, we identified instances, at each of our audited components, of prolonged ETDY travel. These travel events ranged from 2 to 12 years and resulted in significant expense to the Department. We believe this may indicate that components are inappropriately relying on ETDY to respond to staffing or other issues in particular locations. In addition, although Department policy requires a Memoranda of Understanding (MOU) for all ETDY travelers, we found that the FBI did not use MOUs. We also found that the remainder of components reviewed did not include all required language within their MOUs. Finally, our detailed review of vouchers associated with ETDY revealed various issues with claimed expenses.

The Department's policies on ETDY are outlined in a September 1, 1998, memorandum from the Assistant Attorney General for Administration. Prior to the start of our audit, Justice Management Division (JMD) officials recognized that Department policies did not address all ETDY situations and needed to be updated. As of August 2015, a new ETDY policy is in the draft stage, and JMD expects to issue it formally in the near future.

Our report contains 14 recommendations to help the Department improve its oversight of ETDY to ensure that ETDY is used appropriately and efficiently, and that all DOJ components consistently follow ETDY guidelines.

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INTRODUCTION

Oftentimes, in order to perform their work, Department of Justice (DOJ or Department) employees are required to perform official travel on either a domestic or foreign basis. According to DOJ policy, if an employee is traveling more than 50 miles away from his or her permanent duty station to the same location, for longer than 30 calendar days, the employee is considered to be in extended temporary duty (ETDY) status.

This audit examines ETDY activities within DOJ. According to research performed by DOJ Justice Management Division (JMD) in spring 2013, a total of 14 bureaus, offices, boards, and divisions were using ETDY at that point in time. Using JMD's research, we identified components that made significant use of ETDY. We designed our audit to examine the policies, procedures, tracking, and use of ETDY within these components during fiscal years (FY) 2012, 2013, and the first quarter of 2014.[1] The components we reviewed are the Criminal Division, Executive Office for United States Attorneys (EOUSA), U.S. Attorney's Offices (USAO), Federal Bureau of Investigation (FBI), and the National Security Division (NSD). In addition, we examined the oversight of ETDY provided by JMD.

DOJ Definition of and Limits on ETDY Reimbursements

The Federal Travel Regulations (FTR) set forth government-wide policies for official government travel.[2] The FTR encourages government travelers to act in the best interest of the government and requires travelers to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. It also requires agencies to limit the authorization of travel and the payment of travel expenses to travel that is necessary to accomplish the mission in the most economical and effective manner. To allow for the reduction of costs associated with traveling for an extended period, the FTR authorizes agencies to reduce maximum travel reimbursements as compared to the amounts allowed for standard temporary duty travel. We believe that such limits reflect the presumption that standard temporary duty travelers will likely stay at a short-term housing facility, such as a hotel. However, if the same traveler is expected to travel to the same location for an extended period of time, the traveler may be able to lease an apartment or secure other longer-term housing, which may be less expensive than a hotel, and have access to a kitchen, thus negating the need to regularly purchase meals at restaurants or retail establishments.

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[1] Our review period was October 1, 2011, through December 31, 2013.

[2] 41 C.F.R. § 301 (2010).

Within DOJ, when an employee's travel assignment is considered extended because it exceeds 30 days at a distant location, the current DOJ ETDY policy *suggests*, but does not require, that components reduce maximum reimbursements for lodging and meals to a level of no more than 75 percent of the maximum allowable per diem rate.[3] If an assignment is considered extended and is longer than 90 days, the same policy requires that the agency reduce travel reimbursements to the 75 percent maximum.

In addition to the DOJ-wide limits on ETDY-related reimbursements, individual DOJ components can and have placed additional limits on per diem allowances. For instance, in FY 2013, EOUSA and USAO personnel who were traveling to Washington, D.C., on an extended basis were limited to $3,100 per month for lodging and $32 for daily M&IE (Meals and Incidental Expenses) reimbursements.[4] As Table 1 indicates, if a DOJ employee had stayed in Washington, D.C., for all of FY 2013, the savings resulting from DOJ's required reimbursement restriction would have been $24,867 when compared to the standard GSA rates, while a EOUSA or USAO employee, subject to further restrictions by the component, would have saved the government an additional $25,720, for a total savings of $50,587.

Table 1

Comparison of Annual Travel Reimbursement Allowances

Method of Reimbursement	M&IE	Lodging	Total	Estimated Savings
Standard GSA Rates	$25,915	$73,552	$99,467	--
DOJ-wide 75 percent Limit	$19,436	$55,164	$74,600	$24,867
EOUSA/USAO-specific ETDY Limit	$11,680	$37,200	$48,880	$50,587

Note: In order to create a comparable example, the traveler in this scenario is assumed to be in Washington, D.C., for the entire calendar year, and does not consider the cost effects of return trips home, which would increase transportation costs and decrease M&IE and lodging costs in certain instances.

Source: JMD, EOUSA, and GSA

Overview of ETDY Process

JMD is the entity responsible for establishing policies and procedures related to DOJ travel, including those policies related to ETDY. Some components do not

[3] The General Services Administration, Department of Defense, and Department of State set the per diem rates in the continental United States, non-foreign areas and foreign areas, respectively.

[4] By contrast, the GSA rates for Washington, D.C., in FY 2013 were $71 per day in M&IE and ranged from $169 to $226 in lodging per night depending on the month, both well more than the USAO-permitted reimbursement rates.

process their own travel documents and rely on JMD Finance Staff to sub-certify travel vouchers.[5] Unlike the other components we reviewed, the FBI processes its own travel vouchers and manages its ETDY activities without JMD involvement.

When a travel assignment exceeds 90 calendar days, DOJ policy states that the agency and employee are required to execute a Memorandum of Understanding (MOU) between the employing component's authorizing officials and the traveler.[6] If for any reason the travel is extended beyond the originally agreed-upon period, a new MOU, or an addendum to the original MOU, must be executed. Additionally, during ETDY travel the employee's home station remains the same and there is no change in salary, unless specifically authorized.

In some cases, extended travel will go beyond 1 year. If that occurs, the traveler will be subject to additional regulations. Under Internal Revenue Service (IRS) regulations, travel reimbursements for any trip that is expected to go longer than 1 year generally are considered to be taxable income. If it is known at the outset of travel that the trip will be longer than 1 year, then all lodging and M&IE at the ETDY location is taxable. If a trip is expected to last less than a year, but at some point the expectation changes and the travel assignment will last longer than 1 year, travel reimbursements are taxable at the point that the expectation changes.

According to current IRS regulations, if the individual is traveling to investigate, prosecute, or provide administrative assistance related to federal crimes, and this individual also has permission from the Attorney General or a designee, the individual will not be required to include travel reimbursements in the reported amount of taxable income.[7] Within the Department, the Attorney General has delegated this authority to the Assistant Attorney General for Administration and the Assistant Director of the Finance Division at the FBI. According to JMD, anyone on ETDY for more than 2 years, regardless of the aforementioned Attorney General determination, must include certain travel reimbursements as taxable income.

JMD Department-wide ETDY Survey

The Department's ETDY policies are outlined within a September 1, 1998, memorandum (1998 Policy) from the Assistant Attorney General for Administration. Prior to the start of our audit, JMD officials recognized that the Department's ETDY policies needed to be updated. A JMD official further noted that lawmakers had raised concerns over ETDY expenditures in a congressional hearing. These factors

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[5] Sub-certification is the process of recording an obligation, payment, travel authorization, advance, or voucher as an official transaction. JMD performed sub-certification duties on all Criminal Division vouchers within our audit, and only the taxable vouchers for EOUSA/USAO and NSD.

[6] The MOU documents matters relating to the travel, including the dates, reimbursement rates, and return trips home.

[7] 26 U.S.C. §162(a) (2011) and IRS Publication 463.

led JMD in April 2013 to begin to examine ETDY and obtain a better understanding of ETDY use throughout all DOJ components.

Because DOJ financial systems were not designed to track ETDY separately from short-term travel, JMD did not have empirical data on the use of ETDY.[8] Therefore, JMD began its review by surveying all Department components on their ETDY activities. In its April 2013 data call, JMD requested that all DOJ components provide the following information for all employees on ETDY at the time of the request: (1) traveler name, (2) home station, (3) ETDY location, (4) length of ETDY assignment, and (5) costs incurred to date.

We used the information from JMD's data call to identify DOJ components that reported the highest ETDY expenditures.[9] As a result, we included the following components in our review: the Criminal Division, EOUSA/USAOs, the FBI, and NSD. Because comprehensive financial data specific to ETDY did not exist, we obtained available travel data for FYs 2012 and 2013, as well as the first quarter of 2014, and performed analyses to estimate the universe of ETDY costs for our reviewed components. We did this by isolating lodging costs because they are the largest ETDY expense. Although not a complete accounting of DOJ ETDY expenditures for our review period, these lodging costs provided a frame of reference for the use of ETDY among these components and a baseline for the amount of funds involved. As shown in Table 2, from October 1, 2011, through December 31, 2013, we estimate that the components we reviewed expended over $54 million on ETDY lodging.

Table 2

ETDY Lodging Spending Estimate
October 1, 2011, through
December 31, 2013

Components	**Totals**
Criminal Division	$1,201,610
EOUSA/USAOs	$2,527,635
FBI	$49,891,249
NSD	$477,414
Total	**$54,097,909**

Source: Criminal Division, EOUSA, FBI, JMD, and NSD

According to the results of the JMD data call, the FBI was by far the largest DOJ user of ETDY. Although the FBI uses ETDY for a variety of purposes, such as

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[8] We address this lack of ETDY tracking in our second Finding.

[9] JMD's data call was intended to provide basic, informal information about ETDY use in the Department. Therefore, JMD did not provide the components with comprehensive methodology or require evidence to support the information provided. As a result, there were variances in the way the components responded, and the data could not be relied upon in any significant way. We used it simply to narrow the focus of our review to components reporting the highest ETDY expenditures.

special assignments and responding to critical incidents, a significant portion of the FBI's ETDY travel activity in our review period related to its Headquarters Staffing Initiative (HSI) program, which started in FY 2007 to help increase staffing levels at FBI headquarters (FBIHQ). Within the HSI program, an FBI employee can apply for an 18-month rotation to FBIHQ and choose whether to perform the assignment under an ETDY arrangement or accept a transfer to Washington, D.C. FBI officials stated that the FBI previously found it difficult to staff positions at FBIHQ when the only option for the employee was to permanently move to Washington, D.C. The officials said that agents are more willing to come to FBIHQ on a temporary basis because it eliminated the drawbacks related to a permanent move, such as relocating families to a higher cost-of-living area.

We found that a significant portion of long-term travel at the Criminal Division, EOUSA/USAOs, and NSD occurred when employees worked on temporary detail assignments away from their home office. In some cases, this included Assistant U.S. Attorneys in a USAO being detailed to the Criminal Division or NSD.

OIG Audit Approach

Our audit objectives were to evaluate whether DOJ: (1) has sound ETDY policies and practices that promote cost effectiveness, (2) has adequate tracking systems and documentation for ETDY expenditures, and (3) is making appropriate use of ETDY. During our audit, we reviewed ETDY activity at the Criminal Division, FBI, EOUSA/USAO, and NSD, as well as oversight provided by JMD. We reviewed travel occurring between October 1, 2011, and December 31, 2013. We selected these components based upon their significant use of ETDY as reported to JMD in its April 2013 data call.

To accomplish our objectives, we conducted 69 interviews with component officials, analyzed data to create a universe of ETDY, reviewed MOUs when applicable, and examined travel records.

We found that current DOJ ETDY policy needs updating to ensure consistent application, components need to better track ETDY, and consideration should be given to the specific travel situation to determine appropriate use of ETDY. Our first finding provides our views on policy matters, both at the Department and the component level, along with an examination of tax-specific policies and practices. In our second finding, we focus on whether components had adequate systems in place to track ETDY activity and spending. Finally, our third finding chronicles the components' use of ETDY, including our assessment as to whether certain ETDY actions were appropriate, and the results of our review of component travel vouchers.

FINDINGS AND RECOMMENDATIONS

EXTENDED TEMPORARY DUTY TRAVEL POLICIES

We found that the 1998 DOJ ETDY Policy is outdated and does not provide thorough and current guidance to Department components sufficient to ensure that they utilize ETDY in the most cost-effective manner. For example, we found that the 1998 Policy allows Department components to define and treat ETDY differently. In addition, the policy does not address changes in technology, and components do not have clear guidance on how to handle certain technology-related travel expenditures. JMD has worked with Department components to draft a revised ETDY policy, and as of August 2015, it has not yet been issued. However, we believe that the Department's ETDY policy should go further to ensure that ETDY decisions are fully informed to help ensure that funds are not wasted. We also believe that the Department must address inconsistencies in the application of tax policies related to ETDY and other deficiencies associated with the taxability of ETDY reimbursements.

Department-wide ETDY Policy

Current DOJ rules and regulations related to ETDY are listed within a policy document issued in September 1998 (1998 Policy). Prior to the start of our audit, JMD officials recognized that the 1998 Policy was not comprehensive and needed updating. According to a JMD official this, coupled with the fact that lawmakers had raised concerns over ETDY expenditures in a congressional hearing, led to JMD's review of ETDY use in the Department and the potential for revising the 1998 ETDY policy. We reviewed the 1998 Policy and found that it does not include thorough guidance for managing ETDY travel. Some of our concerns with the 1998 Policy are noted below.[10]

- The 1998 Policy does not require components to track and monitor ETDY costs, despite the fact that these costs can be very high.

- The policy defines ETDY as travel to a single location that exceeds 30 days, and while components are encouraged to reduce travel benefits at that threshold, components are only required to reduce benefits at the 90-day mark. Because the policy does not require travel to be treated any differently until 90 days, EOUSA/USAO and the Criminal Division did not consider trips of less than 90 days to be ETDY travel. Similarly, the FBI's travel policy categorizes travel differently than the DOJ policy and defines ETDY as travel longer than 60 days.

[10] Because JMD was already heavily invested in revising the policy when we started our audit, we did not perform an exhaustive review of the 1998 Policy.

- The 1998 Policy related to return trips home is weak and does not send a consistent message on how to apply the policy or if cost containment is a priority.

- The 1998 Policy does not require JMD to ensure that component policies do not conflict or create situations in which travelers with similar circumstances in different components would be treated differently. For instance, the FBI allows reimbursements for certain expenses that other components do not. Some FBI travelers are allowed to include in their lodging costs pool maintenance, landscaping, and snow blowing at their home of record, as well as gym memberships and fitness classes at their temporary duty location.[11]

- Since the issuance of the 1998 Policy, there have been numerous improvements in technology, and some related expenditures were not addressed in the policy, such as cell phone use, Wi-Fi, and cable and Internet bundling. These items often appeared on travel vouchers within our review period, and components should have clear guidance on how to best address these costs.

JMD Analysis of ETDY Use and Policy Revision

To better understand issues with ETDY spending, in April 2013 JMD requested components using ETDY to provide information on their use of ETDY. We reviewed the data call results and found numerous inconsistencies in the responses, such as varying cost calculation methods and both under and over-reporting of travelers. However, we believe that the data call results provided JMD with valuable information about the ETDY activity within the Department and allowed JMD to perform a deeper review of individual ETDY events within the components.

In performing its review of a sample of ETDY events, JMD found that the Department would benefit from strengthening and clarifying the 1998 Policy. Each of the components within our review received follow-up memoranda from JMD that outlined findings and follow-up actions required. Further, JMD worked with the components to resolve any outstanding issues. According to JMD officials, this review helped them to further conclude that the Department's ETDY policies and procedures needed to be updated and tightened.

A JMD official stated that they have been actively working with Department components since the April 2013 data call to create a new Department-wide ETDY policy, and that, as of August 2015, this policy has not yet been issued. In revising the policy, JMD created a working group consisting of representatives from various DOJ components. A JMD official stated that the working group met on a regular basis to discuss the concerns of JMD and the components and to consider policy changes and updates. In drafting the new policy, JMD has solicited comments from

[11] According to FBI policy, the cumulative amount claimed cannot exceed the allowable monthly lodging expense cap.

the working group on six occasions and from the Department as a whole on two separate occasions. We reviewed the different iterations of the new policy and observed that JMD appeared to be working collaboratively with working group members to develop a document that not only addresses the needs of the individual components but also contains controls to help ensure fiscal responsibility and encourage proper stewardship of taxpayer dollars.

The latest version of the draft policy addresses weaknesses in the policy, including some matters identified above. However, we believe that the Department's ETDY policy should go further to ensure that ETDY decisions are fully informed to help ensure that funds are not wasted. For example, the revised draft policy requires components to compare the potential cost of an ETDY event to the cost of executing a Temporary Change of Station (TCS) transfer, consider the most cost effective method, and in some cases require the employee to undergo a TCS transfer.[12] We agree that this could lead to potential cost savings if it is found that a TCS is more cost-effective than an ETDY. However, some DOJ components occasionally need to send an employee to work in a location where that component does not have an office. In those instances, components are limited in their ability to use TCS. It is important for components to ensure that using ETDY is a cost-effective method for accomplishing their operational needs, but we believe that the requirement should be more inclusive and account for the varying abilities of DOJ components to utilize different methods for effecting temporary assignments.

We also believe that the new policy should go further in addressing the potential risk of an employee receiving duplicate benefits. During our audit, we reviewed a situation where a DOJ employee received ETDY benefits for traveling on a temporary basis to Washington, D.C., while this employee's spouse, who worked for another DOJ component, was relocated to Washington, D.C., at roughly the same time. According to JMD, the Department later conducted a thorough review of the benefits provided in this situation and concluded that these individuals did not receive duplicate reimbursements for the same expense. However, this identified a potential risk we believe JMD should address. Therefore, we recommend that JMD require travelers on ETDY to disclose if anyone in their household is receiving benefits for temporary or permanent relocation costs.

Our review of the 1998 Policy and JMD's current revision efforts highlight the need to ensure that the policy remains relevant in light of technological changes as well as changes in operations and practices. Because the 1998 Policy has become outdated, the potential for inconsistencies in the use and handling of ETDY has increased, as reflected in the FBI allowing certain reimbursements not allowed elsewhere and the handling of technology costs such as Wi-Fi. Therefore, we believe that JMD should ensure that the policy remains relevant and accounts for any revised spending priorities. In December 2012, DOJ issued a directive stating that all Orders, Policy Statements, and Instructions must be reviewed every

[12] A TCS transfer is a relocation of an employee from one official station to another on a temporary basis.

5 years.[13] We believe that this requirement to examine policy statements on a regular basis will help address this concern. However, the policy has not yet been finalized; therefore, we recommend that JMD issue its new policy and require all DOJ components to integrate the new guidance into its operations.

Tax-related matters

According to current IRS regulations, if an individual is traveling for work for longer than 1 year, lodging as well as M&IE reimbursements are taxable as personal income to the traveler.[14] Further, the taxability begins once it is known that the travel will exceed 1 year, not at the 1-year mark. However, if the individual is a federal employee certified by the Attorney General (or the Attorney General's designees, the Assistant Attorney General for Administration and the Assistant Director of the Finance Division at the FBI) as traveling on behalf of the United States in temporary duty status to investigate, prosecute, or provide administrative support services for the investigation or prosecution of a federal crime, the individual is not required to include reportable travel expenses in his or her taxable income.[15] In May 2008, JMD received guidance from the IRS on the taxability of travel reimbursements. JMD has interpreted this guidance to indicate that, regardless of the applicability of a certification, all travelers on ETDY for more than 2 years must include reportable travel reimbursements as taxable income.

Attorney General Tax Certifications

During our review, we found some travelers had received the required certification and others had not. For those instances where individuals did not receive a tax exempt certification, it appears that this was based on the components' interpretation as to whether an individual's work met the threshold necessary to trigger eligibility for the exemption. After analyzing available policy and legal precedent, we believe that the exemption authority is open to varying interpretations.

For example, during our review period, the FBI initially considered HSI participants who worked in the FBI's Human Resources, Security, and certain other divisions to not be eligible for the tax exempt certification, as they did not actively investigate cases while acting in these temporary roles. HSI participants within the Counterterrorism and Criminal Investigative Divisions, on the other hand, received exemptions due to the nature of the work performed within these work units.

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[13] DOJ Instruction 0401.00.01, Directives Management Procedure Guide

[14] Personal income tax matters related to travel are complex and can have significant impact on an employee's personal situation. For example, ETDY travel reimbursements that are taxable and are considered income in the eyes of the IRS could push an employee into a higher tax bracket. This could affect the calculation of other tax credits and benefits, completely unrelated to ETDY, that the employee would normally receive. In order to comply with the Federal Travel Regulations (FTR), the Department reimburses the employee for any taxes owed as a result of ETDY income; the nature and extent of such reimbursements are beyond the scope of this review.

[15] 26 U.S.C. §162 (2011), and IRS Publication 463.

According to an FBI official, in FY 2014 the FBI began to reassess the tax exempt certification eligibility of HSI participants. These officials found that there were HSI participants who were not receiving tax exempt certifications but were traveling longer than 1 year, and therefore being taxed on lodging and M&IE reimbursements. Officials from the FBI Finance Division and FBI Office of the General Counsel (OGC) concluded that the HSI program had changed and expanded since its inception and tax exemption eligibility within the program warranted reassessment. As a result of its review, the FBI determined that all HSI participants are eligible for the tax exemption certification as of October 1, 2014. However, this change in FBI tax exemption eligibility is limited to participants in the HSI program and other ETDY travelers in the FBI or other components might not receive the tax exempt certification.

We believe that an employee on ETDY in one component or office should be treated consistently with an ETDY employee doing the same job at another component or in another office, including the provision or eligibility for a tax exemption certification. In turn, we believe that granting a tax exemption for travel reimbursement is a significant decision and requires an appropriate level of scrutiny. Therefore, we recommend that JMD work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department.

Lack of W-2 Forms

In accordance with IRS regulations and the 1998 Policy, ETDY travelers that do not receive a tax exempt certification are taxed on the total lodging and M&IE benefits they receive. All ETDY travelers, regardless of having received a tax exemption for the first 2 years of their travel, are taxed for those same travel benefits for all travel after the initial 2-year period. These taxable amounts are to be tabulated by JMD with the exception of any component, such as the FBI, that generates its own W-2 forms. This information is ultimately communicated to the traveler after the end of the tax year in a W-2 form that identifies as income all taxable ETDY reimbursements.[16] We reviewed W-2 forms for 11 travelers within our ETDY universe, most of whom were on ETDY status for longer than 2 years.

We found that two Criminal Division employees had not been issued travel-related W-2 forms for taxable reimbursements paid within 2012. The first individual had taxable reimbursements of at least $25,695, while the second individual had taxable reimbursements of at least $10,267. According to a memorandum from JMD to the Criminal Division dated November 2013, JMD was aware of these missing W-2 forms at that time. The memorandum stated that JMD found the Criminal Division did not properly notify JMD of the fact that both

[16] This W-2 form is separate from the one that all employees receive summarizing regular earnings and tax contributions.

travelers went from non-taxable to taxable ETDY status during 2012, and thus JMD did not generate the proper W-2 forms for these taxable reimbursements.

We also found two instances where FBI travelers did not receive W-2 forms for travel reimbursements that should have been considered taxable. The first individual was on ETDY travel for longer than 2 years. As such, she was not eligible for a tax exempt certification for the period beyond the 2-year threshold. This individual should have been taxed on at least $40,895 of lodging and M&IE reimbursements paid after the 2-year mark. Another individual, who had not been granted a tax exempt certification based on the nature of his work, traveled for more than 1 year and should have been taxed on at least $15,093 of reimbursements paid. An FBI official agreed that both individuals should have been taxed on these reimbursements and should have received W-2 forms summarizing these earnings.

In the follow-up analysis to its spring 2013 data call, JMD determined that multiple components did not communicate to JMD the change in taxability of certain ETDY travel reimbursements. Therefore, JMD was unable to track taxable reimbursements, adjust reimbursements for tax withholdings, and issue timely W-2 forms for those travelers. Consequently, travelers and the components did not pay appropriate taxes at federal, state, and municipal levels. By not being able to properly identify the reimbursements as taxable, the Department and employee also could not make the required payroll related payments to Medicare and Social Security.

JMD did correct this issue from 2013 forward for the travelers it identified from the data call. However, JMD did not issue corrected W-2 forms for previous years for those travelers. We believe that because the respective components and JMD were aware of this situation, they had the responsibility to inform the affected travelers and issue them the proper tax documentation. We brought this to the attention of JMD officials who indicated that the situation would be remedied by including the 2012 travel reimbursements in a current W-2 form for those employees who did not receive the proper tax documents for 2012. As of August 2015, this issue has not yet been resolved. We recommend that JMD require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.

EOUSA National Advocacy Center Lodging

In 1998, EOUSA opened the National Advocacy Center (NAC) on the campus of the University of South Carolina in Columbia, South Carolina, to train personnel in advocacy skills and management of legal operations. According to the NAC, each year it provides training for over 20,000 individuals, including federal, state, and local prosecutors and investigative agencies. An EOUSA official stated that the training itself is coordinated by six experienced Assistant United States Attorneys (AUSA) who are solicited from the USAO offices and on detail to the NAC.

According to the EOUSA official, these detailees originally traveled to the NAC and rented their own apartments. However, in approximately 2006, EOUSA entered into an agreement with the University of South Carolina to use an apartment building, at the cost of $1 a year, in exchange for covering the cost of renovations for the building. EOUSA told us that, after conducting an analysis, it determined that it would be financially beneficial to pay the renovation costs and directly provide detailees with lodging instead of reimbursing individual travelers' lodging costs.

We are concerned that this arrangement, whether the individuals are on ETDY or are stationed permanently at the NAC, could be considered employer-provided housing, which may be a taxable fringe benefit. We asked an EOUSA official how the taxability of the provided lodging was determined, and he replied that EOUSA researched this question and concluded that the lodging benefits provided would not be taxable. We asked EOUSA for any documentation supporting this determination, and EOUSA provided us with a memorandum dated April 19, 2010. This memorandum documents EOUSA's position that the lodging was a tax-free benefit. The memorandum recounts an informal conversation with an IRS agent and includes IRS guidance on unrelated tax topics such as wage withholding procedures, low-income unit guidance, and military business expenses.

After analyzing the memorandum and IRS guidance, we believe that EOUSA's conclusion that the housing provided is a tax-free benefit needs to be revisited. We noted that in the memorandum, EOUSA asserts that the lodging provided is temporary in nature. However, IRS guidance states that a taxpayer is not treated as being temporarily away from home during any period of employment if such period exceeds 1 year.[17] We found that during our review period, there were six AUSAs who resided in the EOUSA building for intervals ranging from about 20 months to 6 years. Moreover, the EOUSA memorandum stated that because detailees do not pay or receive reimbursement for the lodging, it is less likely that this benefit should be included in taxable income. The IRS gives guidance in similar situations, most notably related to taxable employer-provided housing benefits.[18] In those situations, the taxable income is based on the fair value of the housing provided. We found that as of January 2015, rental rates for one-bedroom apartments in Columbia, South Carolina, ranged from approximately $395 per month to $1,000 per month. As a result, if that is considered taxable income, an individual receiving this housing benefit might need to pay federal and state income taxes on $4,740 to $12,000 in additional income per year. Further, the employer and employee may need to make Medicare, Social Security, and state income tax payments accordingly.

We recommend that EOUSA work with JMD and other relevant officials to determine the future and past taxability of the lodging provided at the NAC, update

[17] 26 U.S.C. §162(a) (2011), and IRS Publication 463

[18] I.R.C. § 119(a)

the associated policies if necessary, inform any affected employees, and remedy any amounts owed.

Conclusion and Recommendations Related to Extended Temporary Duty Travel Policies

While DOJ did have an ETDY policy in place, we found that it was outdated and did not include thorough or current guidance to Department components sufficient to ensure that they utilize ETDY in the most cost-effective manner. In 2013, JMD initiated efforts to update the guidance and, as of August 2015, the new policy has not yet been issued. We also identified several issues related to the tax implications of ETDY, including inconsistent interpretations of tax exempt certifications, failure to track taxable reimbursements and issue employees W-2 forms, and a significant question regarding the proper treatment of free housing provided by EOUSA to employees at the NAC.

We recommend that JMD:

1. Issue its new ETDY policy and require all DOJ components to integrate the new guidance into their operations.

2. Ensure that the ETDY policy requires travelers on ETDY to disclose if anyone in their household is receiving benefits for permanent or temporary relocation costs.

3. Work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department.

4. Require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.

We recommend that EOUSA:

5. Work with JMD and other relevant officials to determine the future and past taxability of the lodging provided at the NAC, update the associated policies if necessary, inform any affected employees, and remedy any amounts owed.

TRACKING ETDY ACTIVITY

Each of the components we reviewed tracked ETDY data in only a minimal and manual way, which often led to a lack of knowledge of the components' ETDY activity and various tracking errors. Although JMD's 1998 ETDY policy does not require DOJ components to specifically track ETDY activity, we believe that it is incumbent upon agency management to do so in order to adequately monitor any activity that may incur significant costs to the component, promote good stewardship of taxpayer funds, and encourage transparency within DOJ travel activities.

Lack of ETDY Tracking

In initiating our audit, one of our first tasks was to identify the universe of ETDY activity within our audited components during our review period of October 1, 2011, through December 31, 2013. Despite Department policies in place that govern many aspects of ETDY travel, there currently is no requirement for components to specifically track ETDY travel. Without such a requirement, Department and component officials are able to provide information on overall travel spending and activity but cannot respond definitively to inquiries about the portion of travel that is ETDY or the amount expended on ETDY. According to a JMD official, JMD's spring 2013 data call was the first and only attempt by the Department to determine the extent of ETDY use within DOJ.

While the Department does not require components to track ETDY activity, OMB Circular A-123 states that the proper stewardship of federal resources is an essential responsibility of managers and continuous monitoring can balance the resources needed to maintain effective internal controls. We further believe that tracking and monitoring are important so managers can assess and identify areas of risk. Particularly given that ETDY reimbursements can exceed $50,000 per year, per person, depending upon location and other factors, we believe properly monitoring ETDY use is critical to proper stewardship and risk identification.

Because none of the components we reviewed specifically tracked its ETDY activity, we obtained data from each of the components and manually identified ETDY travelers for each of the reviewed components. The ETDY universe information we received from all of the reviewed components was generally incomplete. For example, the Criminal Division, EOUSA/USAO, and NSD did not provide information on travelers who did not meet their component-specific definition of ETDY. The travelers on ETDY, as defined by the component, were tracked by the components manually and outside of a financial or travel system. We worked with each of these components and developed estimates of their ETDY universe. In addition, the FBI did not maintain, nor could it construct, a reliable universe of its ETDY travelers. Although the FBI kept a running list of individuals in its Headquarter Staffing Initiative (HSI) program, this represented only a portion of its ETDY traveler universe over the course of our review period. The FBI acknowledged that its provision of data to us was not a complete universe and that it was unable to provide a complete accounting of its ETDY travelers or expenditures for our review period. We worked extensively with the FBI to quantify its universe, and FBI officials have indicated that this universe is its best approximation of its universe of ETDY activity for the period of October 1, 2011, through December 31, 2013, and we believe further research would not significantly change the figures.[19]

As a result of the manual way in which we identified the universe, we consider it to be only an estimate of the total number of ETDY events in our audit universe. However, this is the only data that exists, and we confirmed with each component that it is the best representation of the universe available. As shown in Table 3, the FBI was, by far, the largest user of ETDY in our review.

Table 3

ETDY Universe Estimate

Component	**ETDY Events**
Criminal Division	85
EOUSA/USAOs	116
FBI	4,575
NSD	12
Total	**4,788**

Source: Criminal Division, EOUSA, FBI, JMD, and NSD

JMD Oversight

Similar to the components, JMD did not separately track or identify ETDY travel within or across the Department. JMD's draft ETDY policy includes a requirement for components to track and annually report to JMD all ETDY activity. We believe that this added control will give the Department the ability to increase its oversight of ETDY, provide Department components with the necessary information to manage its ETDY activities, and promote better stewardship of taxpayer funds. Therefore, we recommend that JMD ensure that its finalized policy requires components to track and report ETDY activity as contemplated in the draft policy.

Further, because some Department components do not have an automated system to collect, track, and record data specific to ETDY, the recording of this information remains open to human error. Therefore, we recommend that JMD require DOJ components to develop the ability to automate ETDY travel data or put in place other controls to verify ETDY data submitted by the components.

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[19] Similar to the data the FBI provided to us, its response to JMD's spring 2013 data call was incomplete because it included only the 475 individuals in the HSI program. According to our analysis, the FBI did not inform JMD of at least 152 individuals on ETDY outside of the HSI program at that time.

Conclusion and Recommendations Related to Tracking ETDY Activity

We found that the DOJ components we reviewed did not adequately track their ETDY activities. We believe that it is incumbent upon DOJ managers to track ETDY to promote good stewardship of taxpayer dollars, encourage transparency within travel activities, and adequately monitor any activity that may incur significant costs to the Department.

We recommend that JMD:

6. Ensure that the new ETDY policy contains a requirement for components to track and report ETDY activity on a regular basis.

7. Require DOJ components to develop the ability to automate ETDY travel data or put in place other controls to verify the ETDY data submitted by components.

USE OF EXTENDED TEMPORARY DUTY TRAVEL

During our audit, we identified instances where ETDY could have been used more effectively and appropriately. For instance, some travelers on ETDY within the Criminal Division spent very little time at their ETDY locations, despite incurring significant monthly lodging costs in those locations. We also found instances where individuals traveled numerous times to the same location but were not in ETDY status. These travel events could have been less costly if ETDY had been used. Moreover, we identified instances of lengthy ETDY assignments at each of our audited components. Some Department employees were on ETDY for longer than 2 years and one ETDY assignment lasted 12 years. In addition, we found that components did not include all required language within their Memoranda of Understanding (MOU), which are required for ETDY travelers, and that the FBI did not use MOUs altogether. Finally, our detailed review of vouchers associated with ETDY revealed various issues with claimed expenses and voucher retention.

Audit Sample

To verify compliance with existing ETDY rules and regulations, we reviewed expenditures associated with each component's ETDY activity during our review period. As shown in Table 4, we judgmentally selected 70 travelers and examined 1,540 travel vouchers, totaling $3,292,328.[20]

Table 4

ETDY Audit Sample[21]

Component	Criminal Division	EOUSA /USAOs	FBI	NSD	Totals
ETDY Instances in Universe	85	116	4,575	12	**4,788**
Travelers Sampled	18	21	27	4	**70**
Number of Vouchers Examined	590	598	250	102	**1,540**
Estimated Lodging Spending[a]	$1,201,610	$2,527,635	$49,891,249	$477,414	**$54,097,909**
Dollars Tested	$968,565	$968,114	$1,119,547	$236,102	**$3,292,328**

[a] Data on total ETDY spending was not available. However, we were able to estimate total lodging expenses, which partially demonstrates the scope of ETDY use among our audited components.

Source: Criminal Division, EOUSA, FBI, JMD, and NSD

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[20] Our sampling methodology is discussed in greater detail in Appendix 1.

[21] Throughout this report, differences in total amounts are due to rounding.

Inappropriate Use of ETDY

When reviewing travel vouchers, we found that travelers on ETDY did not always stay at their temporary lodging locations for extended periods. We understand that there are valid reasons for travelers to be at locations other than their ETDY location, such as allowed trips home, other operational travel, and leave. However, when combined in excess, such absences from the ETDY location may result in the government not realizing the intended cost savings of ETDY travel, particularly when temporary lodging is obtained through a lease arrangement. According to a JMD official, under these circumstances, the costs for long-term leases and utilities generally are not placed on hold when a traveler is not at their ETDY location. We believe that there is a reasonable expectation that ETDY travelers with lease arrangements should be physically located at their temporary duty locations on a regular basis to realize the cost savings of ETDY travel.

If travelers are at their ETDY location for only a few days in a month and are spending significant time elsewhere, ETDY costs can greatly exceed those of a regular TDY. When performing our review of ETDY vouchers within our audited components, we noted that 2 of the 18 Criminal Division employees on ETDY had lease arrangements and resided at their ETDY location for only a few days within certain months. As shown in Table 5, both Individual A and Individual B had numerous months during which they spent very few days at their ETDY locations, and instead were working at their home office, on leave, or on other operational travel, despite incurring the full amount in ETDY lodging costs for those months.

Table 5

Overview of Two Criminal Division ETDY Travelers

Individual A[a]				Individual B			
Month / Year	Nights at ETDY Location	Nights at home or other location	Monthly ETDY Lodging Costs	Month / Year	Nights at ETDY Location	Nights at home or other location	Monthly ETDY Lodging Costs
ETDY Location: New Orleans, LA				**ETDY Location: New Orleans, LA**			
10/2011	10	21	$2,416	11/2011	10	20	$2,775
11/2011	5	25	$2,332	12/2011	5	26	$2,775
12/2011	4	27	$2,332	01/2012	5	26	$2,775
ETDY Location: Washington, D.C.				02/2012	5	24	$2,775
01/2012	11	20	$3,240	03/2012	6	25	$2,775
02/2012	10	19	$3,204	04/2012	8	22	$2,775
03/2012	8	23	$3,235	05/2012	5	26	$2,775
04/2012	9	21	$3,322	06/2012	10	20	$2,775
05/2012	9	22	$3,266	07/2012	9	22	$2,775
06/2012	4	26	$3,250	08/2012	6	25	$2,775
07/2012	14	17	$3,286	09/2012	3	27	$2,775
08/2012	4	27	$3,260	10/2012	9	22	$2,775
09/2012	14	16	$3,244	11/2012	9	21	$2,775
10/2012	6	25	$3,282	12/2012	6	25	$2,775
11/2012	3	27	$3,283	01/2013	11	20	$2,775
12/2012	7	24	$3,216	02/2013	8	20	$2,775
01/2013	12	19	$3,298	03/2013	3	28	$2,775
02/2013	No data available		$3,437	04/2013	7	23	$2,775
03/2013	14	17	$3,026	05/2013	9	22	$2,775
04/2013	18	12	$3,093	06/2013	3	27	$2,775
05/2013	18	13	$3,353				
06/2013	15	15	$3,373				
07/2013	14	17	$3,304				
08/2013	12	19	$3,377				
09/2013	13	17	$3,309				
10/2013	1	30	$3,360				
Totals:	**235**	**499**	**$79,101**	**Totals:**	**137**	**471**	**$55,500**

[a] The available travel records for Individual A in February 2013 did not provide enough information to determine the number of nights at his ETDY or any other locations.

Source: Criminal Division and JMD

Based on the travel vouchers examined, we believe that Criminal Division management was aware of the short stays that these individuals had at their ETDY locations because all vouchers for the months noted above generally showed approvals by Criminal Division officials. However, we could find no evidence that Criminal Division management reviewed the recurring travel pattern and considered whether ETDY continued to be the appropriate approach for this assignment. According to a Criminal Division official, at the time the long-term lodging arrangements were made, the Criminal Division was responding to a high-priority prosecution and it was not known that the individuals would be spending significant time in other locations. However, we believe that it is the responsibility of management to assess on an ongoing basis high-cost expenditures, such as ETDY travel, in certifying the appropriateness of such expenditures. For instance, in the case of Individual B, if Criminal Division management actively reviewed the time spent at the ETDY location after the first 6 months of travel, they may have decided that using ETDY for 39 nights within a 182-day period was indicative of a trend that should not continue. By ending the ETDY at that time, they may have incurred lodging costs of only $12,618, for the 98 nights of lodging at the established government per diem rates instead of the $38,850 paid for the remaining 14 months of ETDY lodging at $2,775 each month, which would have resulted in a savings to the government of $26,232.[22]

We believe that such examples represent a lack of managerial oversight in assessing on an ongoing basis the type of travel appropriate for accomplishing mission objectives. The current ETDY policy does not require or encourage components to reassess ETDY for any reason or time period or to do a cost comparison of ETDY versus other methods. Although the draft policy includes new controls on lodging expenses and requires cost comparisons to be performed before travel commences, the draft policy does not currently require components to reassess ETDY decisions during an ETDY event. Therefore, we recommend that JMD ensure that its new ETDY policy addresses this issue and require DOJ components to reassess the use of ETDY on an ongoing basis to ensure that it is in the best interest of the government.

Lack of ETDY Use

In addition to reviewing ETDY activity that might have been more cost-effective as standard TDY, we also examined the inverse, that is, standard TDY that may have been more cost-effective as ETDY. The only instances we found of this occurred within the Criminal Division's Health Care Fraud Unit (HCFU). This unit had a significant amount of TDY travel during our review period that may have been more cost-effective if it had been treated as ETDY.

[22] For simplicity, we limited this analysis to lodging costs. Other costs, such as M&IE, return trips home, taxis, and flights would have been based on multiple variables and could not accurately be compared for a hypothetical situation. When on ETDY, costs such as rent and utilities are considered lodging costs.

Health Care Fraud Unit Travel

Since 2009, HCFU operations, including salaries and travel, have been funded by a reimbursable agreement with the Department of Health and Human Services. This agreement, which may be renewed annually, provides funding to the Criminal Division, FBI, EOUSA/USAOs, and others within DOJ to combat health care fraud. The HCFU, which is comprised of approximately 40 Criminal Division lawyers in the Division's Fraud Section, prosecutes health care fraud-related crimes across the country. Attorneys within the HCFU are generally stationed in Washington, D.C., and are specifically assigned to one of nine target cities identified as having significant healthcare fraud activity.[23] We found that HCFU attorneys had numerous and consecutive travel transactions to the same location during our review period of October 1, 2011, through December 31, 2013, yet were not on ETDY. According to travel data provided by both JMD and the Criminal Division, the HCFU spent approximately $3,685,206 on travel-related activities over the course of our review period.[24] Some travelers traveled to one of the healthcare fraud target cities on Monday, returned to Washington, D.C., for meetings on Fridays, returned to the same target city the subsequent work week, and then repeated the process.

Of the 51 individuals that worked within the HCFU during our review period, we found multiple examples of high travel costs. For example, we found one individual who traveled from Washington, D.C., to Miami, Florida, on 73 occasions between April 2012 and December 2013 for 326 travel days and a total of $107,950 in total travel costs. Another individual traveled from Washington, D.C., to Brooklyn, New York, on 24 occasions between October 2011 and July 2012 for 284 travel days and a total of $76,413 in travel costs.

When we asked an HCFU official about these high travel costs, he stated that early on in the unit's history it was determined that the unit's travel costs were going to be disproportionately high based on the HCFU's unique mission and the need for the Washington, D.C.-based attorneys to routinely travel to other locations. A Criminal Division official emphasized that HCFU determined, at the outset of the health care fraud program, that a large portion of the HCFU travel was to be performed on a standard TDY (non-ETDY) basis due to the mission and the uncertainty of the cases or matters. This official also stated that the Criminal Division reviewed the HCFU's travel and determined that its practice of not using ETDY was acceptable to maintain necessary flexibility given the nature of the work the HCFU performs.

We do not believe the HCFU's mission and activities preclude the possibility for cost savings through ETDY; to the contrary, repetitive travel over a long period of time to the same distant location is particularly well-suited to using ETDY to

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[23] Those cities were: Baton Rouge, Chicago, Dallas, Detroit, Houston, Los Angeles, Miami, New York City, and Tampa.

[24] While we were only able to obtain lodging data for universe data, we were able to obtain total spending information for the HCFU.

maximize the efficient use of limited government resources. Yet, according to the official from the HCFU with whom we spoke, the Criminal Division does not formally present ETDY as an option to travelers. However, if an individual suggests the possibility of traveling on ETDY status, the applicable parties will then discuss the idea.

When we asked a Criminal Division official why the ETDY option is not presented to these travelers, he stated that requiring travelers to be on ETDY might pose some significant staffing problems for the HCFU and that the HCFU sees a benefit from having the individuals back in the office for regular meetings and trainings. However, the official did state that HCFU currently had four travelers on ETDY, and that these individuals had voluntarily requested to be on ETDY. We believe that this is a strong indicator that ETDY can be utilized effectively within the HCFU. Considering the availability of technology that enables employees to participate in meetings and receive training remotely, we believe that the HCFU should develop a consistent method of meeting its operational goals while simultaneously lowering travel costs to the government. Therefore, we recommend that the Criminal Division ensure that the HCFU fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

Lengthy ETDY Assignments

In many situations, ETDY travel has the potential to save the government a considerable amount of money when it is used instead of regular travel. However, when an ETDY assignment extends for a significant period of time, components should consider other long-term solutions, such as relocating the employee or directly hiring someone in the new location.[25] As detailed below, we identified instances of lengthy ETDY assignments at each of our audited components. Some Department employees were on ETDY for longer than 2 years, and one ETDY assignment lasted 12 years.[26]

Criminal Division

Within the Criminal Division, we found that during our review period, 9 out of the 85 ETDY instances in our universe lasted for more than 2 years. The travel ranged from about 2-and-a-half years to almost 4 years. When we asked a Criminal Division official about these ETDY events, the official told us that four of the individuals were assigned to a particular case whose time frame was difficult to predict. Additionally, the official told us that the five other individuals were detailed to the Criminal Division as subject matter experts. Our sample of travel vouchers

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[25] According to JMD, EOUSA, and Criminal Division officials, there are limitations on hiring authorities and using transfer options, so not all of these options are always available to every component.

[26] We judgmentally selected travel that exceeds 2 years as that is the point where all ETDY travel becomes taxable regardless of the exemption discussed in first finding of this report.

included seven of the nine Criminal Division employees who were on ETDY status for more than 2 years. Therefore, we had detailed information about the expected length and costs associated with the travel for these individuals. Our review of the ETDY documents for these individuals revealed that five had incurred travel expenses greater than $90,000 and two individuals may have incurred costs approaching $200,000 over the life of the ETDY events. These examples at the Criminal Division highlight the significant cost of lengthy ETDY assignments and are displayed in Table 6.

Table 6

Lengthy Criminal Division ETDY Travelers
October 1, 2011, through December 31, 2013

Employee	Travel Period Reviewed	ETDY Costs in Audit Sample	Expected ETDY Duration	Estimated Total Cost of ETDY Event[a]
Individual A	10/2011 – 10/2013	$153,455	10/2010 – 10/2013	$190,656
Individual B	10/2011 – 08/2013	$138,945	05/2010 – 08/2013	$191,645
Individual C	12/2011 – 12/2013	$137,642	12/2011 – 06/2014	$156,242
Individual D	10/2011 – 12/2013	$92,921	01/2011 – 07/2014	$120,821
Individual E	10/2011 – 11/2013	$94,108	06/2010 – 12/2013	$106,508

[a] In this column, we provide a conservative estimate of the total ETDY costs. We calculated this by taking the total costs from our voucher testing (found in the third column) and adding the MOU-allowed amount for monthly lodging for the months outside of our review period. Our estimate did not include, for the months outside our review period, the costs for M&IE, return trips home, or other miscellaneous expenses because these can vary from month-to-month, and we did not have enough information to estimate these cost types.

Source: Criminal Division and JMD

EOUSA/USAOs

Our review of EOUSA/USAO travel indicated a propensity for long ETDY events. We found that 34 out of the 116 ETDY instances in our ETDY universe, or almost 30 percent, lasted for more than 2 years. Although in most instances EOUSA took steps to significantly limit the authorized amounts for lodging and M&IE for the individuals on ETDY, we identified two individuals whose ETDY assignments we believe would reasonably be perceived as excessive.[27] The first individual was on ETDY for more than 6 years, and the other individual was on ETDY status for 12 years. Our review of the ETDY documents for these individuals revealed that they may have incurred travel expenses of approximately $193,000 and $292,000, respectively, over the life of their extensive ETDY events.

[27] These two individuals were, at times during their ETDY assignments, subjected to limitations on lodging and M&IE.

Table 7

Lengthy EOUSA / USAO ETDY Travelers
October 1, 2011, through December 31, 2013

Employee	Travel Period Reviewed	ETDY Costs in Audit Sample	Expected ETDY Duration	Estimated Total Cost of ETDY Event[a]
Individual A	10/2011 – 06/2013	$75,429	03/2007 – 06/2013	$193,000
Individual B	10/2011 – 08/2012	$29,719	12/2000 – 12/2012	$291,800

[a] In this column, we provide a conservative estimate of the total ETDY costs. We calculated this by taking the total costs from our voucher testing (found in the third column) and adding the MOU-allowed amount for monthly lodging for the months outside of our review period. Our estimate did not include, for the months outside our review period, the costs for M&IE, return trips home, or other miscellaneous expenses because these can vary from month-to-month, and we did not have enough information to estimate these cost types.

Source: EOUSA

We spoke to EOUSA officials about the significant number of lengthy ETDY assignments. They explained that many travelers, including Individuals A and B, were on ETDY for long periods of time because their assignments required specialized skillsets that others do not have. Other reasons provided by EOUSA for lengthy ETDY include a lack of applicants for a vacant assignment, and that certain initiatives are temporary in nature and EOUSA believes they are best staffed through the use of a detailee and not by a permanent position.

NSD

Our review of NSD travel data indicated that 2 of its 12 ETDY instances in our universe lasted longer than 2 years. One individual completed a 3-year ETDY in March 2013, and another individual is expected to end a 4-year ETDY in January 2016. We estimate that these individuals' travel expenses would total approximately $141,000 and $167,000, respectively, over their ETDY travel. According to NSD officials, these individuals possessed specialized knowledge needed for specific assignments and would not have participated if they were permanently moved to Washington, D.C.

Table 8

Lengthy NSD ETDY Travelers
October 1, 2011, through December 31, 2013

Employee	Travel Period Reviewed	ETDY Costs in Audit Sample	Expected ETDY Duration	Estimated Total Cost of ETDY Event[a]
Individual A	02/2012 – 12/2013	$89,170	02/2012 – 01/2016	$166,670
Individual B	10/2011 – 03/2013	$76,208	01/2010 – 03/2013	$141,308

[a] In this column, we provide a conservative estimate of the total ETDY costs. We calculated this by taking the total costs from our voucher testing (found in the third column) and adding the MOU-allowed amount for monthly lodging for the months outside of our review period. Our estimate did not include, for the months outside our review period, the costs for M&IE, return trips home, or other miscellaneous expenses because these can vary from month-to-month, and we did not have enough information to estimate these cost types.

Source: NSD

FBI

After examining available data for 3,679 instances of ETDY travel at the FBI, we found only 15 individuals traveled for more than 2 years, 14 of whom traveled for less than 25 months and 1 of whom was on ETDY for a total of about 3 years.[28] According to an FBI official, these were isolated incidents based on the individuals' subject matter expertise and operational needs at the time.[29]

Overall Assessment

The components provided various reasons to justify the instances we found of lengthy ETDY travel. Nevertheless, we believe that the decisions to use lengthy ETDY assignments may not be in the best financial interest of the government in many such circumstances. As noted above, the travel costs incurred on ETDY events represent a significant financial outlay on behalf of the Department and we believe that it is incumbent on Department managers to maintain ongoing close control over such spending. Further, using ETDY in this manner may create the perception of a component inappropriately relying on ETDY to respond to human resource shortages in particular locations or an attempt to fill vacancies. At the very least, components should be required to consider the various travel and staffing options available and their relative cost-effectiveness in order to make informed decisions that simultaneously promote operational goals, sound personnel practices, and financial discretion.

[28] As detailed earlier, the FBI could not provide definitive ETDY universe information. Of the 4,575 instances of ETDY travel in the universe provided by the FBI, complete travel length data was only available for 3,679.

[29] None of the 15 individuals who traveled for more than 2 years were within our voucher testing sample, nor was there documentation indicating any fixed monthly costs. Therefore, we were not able to estimate spending over the length of their ETDY travel.

JMD's draft policy includes new controls to limit ETDY duration. Specifically, any ETDY that exceeds 2 years in length will require approval from the Assistant Attorney General for Administration. We believe that this added control will provide increased oversight and promote informed decision making when it comes to considering lengthy ETDY travel along the lines discussed above. Therefore, we recommend that JMD ensure that new controls are enacted to promote sound and cost-effective decision making for lengthy ETDY travel decisions.

Accounting, Policy, and Travel Voucher Exceptions

Throughout our testing of ETDY vouchers originating within the audited components, we found various instances of noncompliance with established travel and accounting guidance and policies. The deficiencies we identified are summarized below.

Cost Categorization

Overall, we found that various costs on Criminal Division travel vouchers were incorrectly categorized within the Financial Management Information System (FMIS) accounting system. Altogether, we found approximately $247,777 of the Criminal Division's lodging expenses within our review period that were not categorized as lodging, but were instead categorized as "Miscellaneous Other Expenses." According to a JMD official, this data was entered into the accounting system by JMD and not by the Criminal Division. A JMD official later told us that they are now verifying the cost categorization on each transaction they enter into the accounting system. We believe that to manage travel properly and to make budgeting decisions, it is vital to have the most accurate possible information. Therefore, we recommend that JMD review its voucher payment procedures, identify any inconsistencies that lead to incorrectly categorized costs, and implement corrective action.

Memoranda of Understanding

One of the principal requirements of the 1998 Policy is for components to maintain an MOU, executed between the traveling employee, authorizing official, and an official at the temporary duty site, in each instance of extended travel assignments in excess of 90 days. The 1998 Policy requires that these MOUs contain information regarding the traveler's residence at their permanent duty station:

> The MOU must require the employee to certify whether or not he or she intends to maintain a personal abode in a real and substantial sense at the permanent duty station. The MOU must also require the employee to notify his or her supervisor if at some point during the assignment, the personal abode at the official duty station is no longer maintained, or has been changed in a substantial manner to reduce living expenses. The MOU must also require that the employee notify his or her supervisor of any change in the cost of lodging at the temporary duty location.

To ensure proper payment of travel vouchers, JMD requires components to submit and maintain copies of MOUs when applicable. However, we found that none of the MOUs at the Criminal Division, NSD, or EOUSA/USAO contained the aforementioned requirements for the employee to certify their personal abode or for the employee to notify a supervisor of any specified changes. JMD has decided not to include this specific requirement in its draft ETDY policy, which instead requires travelers to communicate any changes in temporary duty lodging arrangements. We do not believe that it would an effective use of JMD officials' time to revise MOUs that have either expired or are about to expire. Therefore, we believe that newly executed MOUs must contain language consistent with the policy in place, and JMD should review the MOUs to ensure compliance. We recommend that JMD improve the controls over newly executed ETDY MOUs to help ensure DOJ components' ETDY MOUs contain language that is compliant with the applicable ETDY policy.

Lack of MOUs at the FBI

In its spring 2013 data call, JMD determined that the FBI was not using MOUs for the ETDY travelers reported to JMD. JMD recommended that the FBI create a standard MOU. However, at the time of the data call, the FBI was not keeping track of, and JMD was unaware of, FBI employees on ETDY outside the HSI program. Thus, JMD's recommendation to the FBI only focused on HSI participants.

In response to the JMD recommendation, the FBI stated that it distributes to each HSI participant program rules, which encapsulate the MOU requirements from the 1998 Department-wide policy. We reviewed the program rules provided to HSI participants, and we do not believe that all the requirements from the Department-wide policy are included. For instance, the FBI policy does not include the personal abode information discussed in the previous section of this report.

The FBI also indicated that it does not require each HSI participant to sign a document acknowledging receipt of the program rules. The 1998 Policy requires an executed MOU between the employee, an authorizing official, and a senior official at the temporary duty site for all extended travel assignments in excess of 90 days. Without formal MOUs, there is a risk of not properly adhering to responsible financial management, and there is a perceived lack of accountability among all the parties involved to abide by applicable policy and to exercise responsible financial management while on extended travel.

Generally, the FBI had two groups of ETDY travelers: those participating in the HSI program and those who were not. The HSI program has guidelines covering extended travel as well as traveler tax implications. While the HSI guidance does not address all of the elements required in an MOU per the 1998 Policy, the draft policy recognizes programs with frequent ETDY travel, like HSI, and allows the programs to have guidance or policy approved by the Component Head or Principal Deputy in lieu of an authorized MOU for each traveler so long as the guidance complies with the required elements of the MOU. However, this MOU exception would not address ETDY travelers at the FBI that are not participating in HSI and do not have program-specific guidance. These individuals still would be subject to the requirement to have an MOU in place, and we therefore recommend that the FBI ensure that its ETDY practices are in accordance with Department policy related to MOU requirements.

ETDY Travel Voucher Testing

We examined ETDY travel vouchers within each of the reviewed components and identified isolated exceptions. While we did not find that these exceptions are themselves indicative of widespread or systemic problems, we believe they should be remedied and recommend that JMD require the components to review the specific ETDY travel voucher exceptions noted, determine if further action is necessary, and if appropriate, remedy those matters accordingly. The exceptions we noted included the following:

- One individual, who was authorized and received the maximum monthly lodging amount of $3,100 for 11 months within our review period, provided supporting documentation for lodging expenses during the first full month that totaled $2,845. We asked an EOUSA official if the authorized amount should have been adjusted accordingly. The official agreed that the amount of the reimbursement should have been limited to about $2,900 a month, which would have resulted in a savings of at least $2,200 for the vouchers we examined.

- In FY 2013, another EOUSA/USAO traveler on ETDY claimed the cost of a $1,195 cellular signal booster and antennae for use at the ETDY location. We believe that this item should have been purchased through normal procurement channels to ensure adherence to government procurement and property management rules. This was approved despite a lack of justification for the unusual purchase. We asked an EOUSA official about this purchase and were told that this expense was authorized at the traveler's location. In April 2014, EOUSA/USAO revised their procedures to require that all ETDY vouchers be reviewed in a central location.

- A Criminal Division traveler who, during an 11-month ETDY, received reimbursement for lodging expenses above his approved monthly lodging amount on nine occasions, received an aggregate overpayment of $1,504. When we followed up with a Criminal Division official about this, the official confirmed that the traveler exceeded the monthly lodging limits. We believe that Criminal Division management did not provide adequate oversight to ensure that the traveler was reimbursed in accordance with the established MOU.

- In our review of 590 Criminal Division vouchers, 35 did not include all required supporting documentation, such as hotel invoices, flight expenses, or taxi receipts, to substantiate the charges being claimed. Additionally, the Criminal Division could not locate some of the vouchers for three individuals within our sample. All of this resulted in a total of at least $121,635 in unsupported costs.[30]

- The FBI was not able to provide complete travel voucher records for six individuals, covering a total of 19 months of travel. Because of the lack of documentation, we were not able to determine the total amount reimbursed to the individuals. An FBI official told us that the FBI is in the process of centralizing its travel processing.

Conclusion and Recommendations Related to the Use of Extended Temporary Duty Travel

While we identified effective use of ETDY within our audited components during our review period, we identified instances where ETDY was not used appropriately. Specifically, we found that some travelers within the Criminal Division did not spend much time at their ETDY locations, while others were on regular travel when ETDY could have been less costly to the government. We also found examples of very long and costly ETDYs when other alternatives might have been considered.

Additionally, we found that some MOU language required in the 1998 Policy was missing from MOUs at the reviewed components with the exception of the FBI, which failed to have any MOUs enacted for any ETDY traveler during our review period. Finally, during our voucher testing we found isolated exceptions that may require remedy by JMD and the components.

We recommend that JMD:

8. Require DOJ components to reassess incidents of ETDY travel on an ongoing basis to ensure that it is in the best financial interest of the government.

9. Ensure that new controls are enacted to promote sound and cost-effective decision making for lengthy ETDY travel decisions.

10. Review its voucher payment procedures, identify any inconsistencies that lead to incorrectly categorized costs, and implement corrective action.

11. Improve the controls over newly executed ETDY MOUs to help ensure DOJ components' ETDY MOUs contain language that is compliant with the applicable ETDY policy.

12. Require the components to review the specific ETDY travel voucher exceptions we noted, determine if further action is necessary, and if appropriate, remedy those matters accordingly.

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[30] Our total of unsupported costs is an estimate because in those cases where the Criminal Division was unable to provide the travel voucher, we do not have exact reimbursement amounts.

We recommend that the Criminal Division:

13. Ensure that the HCFU fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

We recommend that the FBI:

14. Ensure that its ETDY practices are in accordance with Department policy related to MOU requirements.

LIST OF RECOMMENDATIONS

We recommend that:

1. JMD issue its new ETDY policy and require all DOJ components to integrate the new guidance into their operations.

2. JMD ensure that the ETDY policy requires travelers on ETDY to disclose if anyone in their household is receiving benefits for permanent or temporary relocation costs.

3. JMD work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department.

4. JMD require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.

5. EOUSA work with JMD and the relevant officials to determine the future and past taxability of the lodging provided at the NAC, update the associated policies if necessary, inform any affected employees, and remedy any amounts owed.

6. JMD ensure that the new ETDY policy contains a requirement for components to track and report ETDY activity on a regular basis.

7. JMD require DOJ components to develop the ability to automate ETDY travel data or put in place other controls to verify the ETDY data submitted by components.

8. JMD require DOJ components to reassess incidents of ETDY travel on an ongoing basis to ensure that it is in the best financial interest of the government.

9. JMD ensure that new controls are enacted to promote sound and cost-effective decision making for lengthy ETDY travel decisions.

10. JMD review its voucher payment procedures, identify any inconsistencies that lead to incorrectly categorized costs, and implement corrective action.

11. JMD improve the controls over newly executed MOUs to help ensure DOJ components’ ETDY MOUs contain language that is compliant with the applicable ETDY policy.

12. JMD require the components to review the specific ETDY travel voucher exceptions we noted, determine if further action is necessary, and if appropriate, remedy those matters accordingly.

13. Criminal Division ensure that the HCFU fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

14. The FBI ensure that its ETDY practices are in accordance with Department policy related to MOU requirements.

STATEMENT ON INTERNAL CONTROLS

As required by the Government Auditing Standards, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the internal controls of the Justice Management Division (JMD), Criminal Division, Executive Office for United States Attorneys (EOUSA), Federal Bureau of Investigation (FBI), and the National Security Division (NSD) was not made for the purpose of providing assurance on their internal control structure as a whole. Management at these components is responsible for the establishment and maintenance of internal controls.

Through our audit testing, we identified deficiencies in the components' internal controls that are significant within the context of the audit objectives. Specifically, we found deficiencies within current ETDY policy, application of current tax guidance, and component tracking and monitoring of ETDY. These weaknesses in internal controls are detailed within our report and we believe the weaknesses should be addressed.

Because we are not expressing an opinion on the internal control structure of these components as a whole, this statement is intended solely for the information and use of the auditees. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the Government Auditing Standards we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that JMD, the Criminal Division, EOUSA and USAOs, FBI, and NSD management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. Management at these components is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditees and that were significant within the context of the audit objectives:

- 41 C.F.R. § 300-304 (2010).
- 26 U.S.C. § 162(a) (2011).
- IRS Publication 463 (2015).

Our audit included examining, on a test basis, the components' compliance with the aforementioned laws and regulations that could have a material effect on the components' operations, through interviewing personnel, analyzing financial data and sampling travel vouchers and tax documents. Nothing came to our attention that caused us to believe that the components were not in compliance with the aforementioned laws and regulations.

As noted in the Findings and Recommendations section of this report, we found that the Department's ETDY policy was insufficient and outdated and this increases the risk of non-compliance with the regulations identified above. In addition, as noted in our report, we believe that JMD should work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department. Furthermore, JMD should require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of the audit were to evaluate whether DOJ: (1) has sound ETDY policies and practices that promote cost effectiveness, (2) has adequate tracking systems and documentation for ETDY expenditures, and (3) is making appropriate use of ETDY.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards and as described in this appendix. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions in this report.

We did not perform an independent, overall assessment of the reliability of data provided because we used the data for informational and contextual purposes to support our overall conclusions. We performed testing to source documents to assess aspects of the management of ETDY activities and the controls over ETDY resources. The data did not provide the sole basis of our findings.

To accomplish our work, we used information from the FY 2013 JMD ETDY data call to identify DOJ components that were significant users of ETDY. In addition to reviewing JMD's oversight of ETDY, we selected for review the following DOJ components for inclusion in our review: Criminal Division, FBI, EOUSA/USAOs, and NSD. In response to the 2013 JMD data call, these components reported the highest spending on ETDY in comparison to all other DOJ components.

In total, we conducted 69 interviews with component officials, analyzed data to create a universe of ETDY travelers, reviewed MOUs when applicable, and examined travel records. We reviewed travel occurring between October 1, 2011, and December 31, 2013.

ETDY Universe

The total spent on ETDY, which includes expenses such as lodging, M&IE, return trips home, and airfare for each component, was not readily available due to limitations of the Department's accounting systems and because components were not required to track this information. We attempted to gather this data from each of the components and from JMD. Unfortunately, despite our attempts, obtaining this data was not possible. Because of this constraint, we determined that the best way to assemble an ETDY universe was to examine lodging data and estimate trip length based on dates and costs. We thus focused our primary analysis on lodging costs and financial data to identify the universe of travelers on ETDY at any point during our scope.

We reviewed over 750,000 lines of data from the components' financial systems, and we identified 4,788 instances of potential ETDY travel during our audit review period. We used this best known universe to select our judgmental sample of documents to review. Our non-statistical sample design does not allow for projection of the test results to all DOJ ETDY travel. We performed testing within three distinct ETDY-related areas: (1) travel vouchers, (2) W-2 forms, and (3) Memoranda of Understanding (MOU).

Travel Voucher Sample

From our universe of 4,788 instances of ETDY travel, we judgmentally selected 70 travelers on which to conduct further testing.[31] We examined all available ETDY-related travel vouchers and MOUs (where applicable or available) for these 70 travelers. In total, we reviewed 1,540 travel vouchers totaling $3,292,328. We reviewed the travel vouchers for compliance with the MOUs, as well as the 1998 Policy, the Federal Travel Regulation (FTR), and any available component travel guidance.

Our level of testing performed within the reviewed components was designed specific to each component and was formulated to ensure adequate coverage of component ETDY activity in light of the volume of and perceived risks from their use of ETDY as reflected in this audit report. As noted previously, our judgmental sample design does not allow for projection of any test results to all DOJ ETDY travel or to the universe of ETDY within the reviewed component.

Sample of W-2 Forms

To determine if JMD and the FBI were appropriately tracking and classifying appropriate ETDY reimbursements as taxable to their travelers, we identified the instances of ETDY in our universe that were longer than 1 year and those that were longer than 2 years. We selected the 1-year mark because, in the absence of a DOJ-approved exemption, all ETDY travel longer than 1 year is taxable. We selected the 2-year mark because all ETDY travel longer than 2 years is taxable.

JMD is required to track all taxable travel in the components within our review, with the exception of the FBI which manages its travel independently of JMD. We obtained from JMD and the FBI data on taxable transactions during our review period. Based on the available information, we identified individuals that we believed should have received a W-2 form due to their trip purposes and trip length. In total, we reviewed 22 W-2 forms for 11 travelers to test for appropriate taxability.

[31] Travelers in the universe could have had more than one instance of ETDY travel.

MOU Sample

We requested and reviewed executed MOUs for ETDY travel during our review period for the Criminal Division, NSD, and EOUSA. In total, we obtained MOUs for 154 travelers. We reviewed these MOUs to ensure that language in them complied with the requirements put forth in the 1998 Policy. Because the FBI did not execute MOUs for its ETDY travelers, we did not review any MOUs at the FBI.

THE DEPARTMENT OF JUSTICE'S RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

SEP 16 2015

Washington, D.C. 20530

MEMORANDUM FOR JASON R. MALMSTROM
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration

SUBJECT: Response to Recommendations contained in the Office of the Inspector General's (OIG) Draft Report: Audit of the Department of Justice's Use of Extended Temporary Duty Travel

This responds to the OIG draft report: Audit of the Department of Justice's Use of Extended Temporary Duty Travel. We are pleased that the report states that prior to the start of your audit, Justice Management Division (JMD) officials recognized that Department policies did not address all extended temporary duty travel (ETDY) situations and needed to be updated. We also appreciate the collaborative and respectful approach taken by your staff during the audit. We feel confident that JMD's new ETDY policy, once issued, will appropriately close many of the recommendations in the report and provide sound controls in the Department.

The JMD has reviewed the draft OIG report and provides the following responses to the OIG's 14 recommendations. We have communicated the results of this audit report to the Criminal Division, Executive Office for United States Attorneys (EOUSA), and the Federal Bureau of Investigation (FBI) and each concurs their recommendation as listed below.

Recommendation 1: JMD issue its new ETDY policy and require all DOJ components to integrate the new guidance into their operations.

Response: JMD concurs with this recommendation. JMD will issue its new ETDY policy in the near future together with an implementation plan. In addition, JMD will have a Department-wide meeting to socialize the policy and help ensure Department-wide understanding. The policy requires components to develop a process to manage ETDY travel and/or incorporate the internal controls of this policy into component-level internal controls to ensure the policies governing ETDY are followed.

Recommendation 2: JMD ensure that the ETDY policy requires travelers on ETDY to disclose if anyone in their household is receiving benefits for permanent or temporary relocation costs.

Response: JMD concurs with this recommendation. The new ETDY policy explains the lodging situations which affect the per diem amount that may be authorized. The travel authorizing official must disallow or reduce per diem (lodging and/or M&IE) when applicable and based upon the traveler's lodging situation. The policy also requires the ETDY memorandum of understanding (MOU) to inform the travelers that they are required to notify the authorizing officials when there is a change in their lodging situation.

Recommendation 3: JMD should work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department.

Response: JMD concurs with this recommendation. JMD will work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute. In addition, JMD's new ETDY policy will include an explanation on the taxability of ETDY travel reimbursements.

Recommendation 4: JMD require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.

Response: JMD concurs with this recommendation.

Recommendation 5: EOUSA work with JMD and the relevant officials to determine the future and past taxability of the lodging provided at the NAC, update the associated policies if necessary, inform any affected employees, and remedy any amounts owed.

Response: EOUSA concurs with this recommendation.

Recommendation 6: JMD ensure that the new ETDY policy contains a requirement for components to track and report ETDY activity on a regular basis.

Response: JMD concurs with this recommendation. The new ETDY policy requires that components must have a process that tracks and manages the costs of ETDY. In addition, it requires components to conduct an annual review of their ETDY program, including a review of the terms of each MOU, the costs incurred for each person on ETDY travel, the cost-effectiveness of each ETDY assignment, and the component's level of compliance with the

MOU terms. Results of the review must be reported to the JMD, Finance Staff, within 45 calendar days after the end of each fiscal year. The report must be signed by the Component Head or Principal Deputy.

Recommendation 7: JMD require DOJ components to develop the ability to automate ETDY travel data or put in place other controls to verify the ETDY data submitted by components.

Response: JMD concurs with this recommendation. The new ETDY policy requires components to have a process that tracks and manages the costs of ETDY as outlined in this policy. The process must ensure that travel allowances are reduced when appropriate, travelers are relocated when appropriate, and EX-TDY travel is terminated in accordance with this policy.

Recommendation 8: JMD require DOJ components to reassess incidents of ETDY travel on an ongoing basis to ensure that it is in the best financial interest of the government.

Response: JMD concurs with this recommendation. The new ETDY policy requires components to have a process that tracks and manages the costs of ETDY as outlined in this policy. The process must ensure that travel allowances are reduced when appropriate, travelers are relocated when appropriate, and EX-TDY travel is terminated in accordance with this policy.

Recommendation 9: JMD ensure that new controls are enacted to promote sound and cost-effective decision making for lengthy ETDY travel decisions.

Response: JMD concurs with this recommendation. The new ETDY states the following: (1) extended assignments are not intended to substitute for permanent staffing; (2) authorizing officials must consider either ETDY travel or a temporary change of station using the considerations in the policy; (3) ETDY cannot exceed 24 months unless approved by the Assistant Attorney General for Administration; (4) ETDY policy requirements, including the 24-month time limit, cannot be avoided by allowing brief returns to the permanent duty station followed by another ETDY authorization; and (5) components must have a process that tracks and manages the costs of ETDY, must ensure that travel allowances are reduced when appropriate, travelers are relocated when appropriate, and EX-TDY travel is terminated in accordance with this policy.

Recommendation 10: JMD review its voucher payment procedures, identify any inconsistencies that lead to incorrectly categorized costs, and implement corrective action.

Response: JMD concurs with this recommendation. JMD will develop a plan to ensure ETDY travel costs are charged to the correct sub-object code.

Recommendation 11: JMD improve the controls over newly executed MOUs to help ensure DOJ components' ETDY MOUs contain language that is compliant with the applicable ETDY policy.

Response: JMD concurs with this recommendation. The new ETDY policy explains when MOUs are required, which individuals must sign the MOU, when MOU modifications are required, and what must be included in the MOU. The policy also includes a sample MOU template.

Recommendation 12: JMD require the components to review the specific ETDY travel voucher exceptions we noted, determine if further action is necessary, and if appropriate, remedy those matters accordingly.

Response: JMD concurs with this recommendation.

Recommendation 13: Criminal Division ensure that the Healthcare Fraud Unit (HCFU) fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

Response: The Criminal Division (Division) concurs with this recommendation. The Division continues to work with JMD to determine the appropriate guidelines necessary considering the unique mission of the Division's HCFU. The Division will evaluate the appropriateness of ETDY for each traveler in the HCFU and ensure that each is performed in the most efficient and economical manner consistent with the new ETDY policy. The Division will continue to be in compliance with the FTR, as we finalize the appropriate guidelines. Finally, before and during the OIG audit, the Division has instituted additional processes in the HCFU to ensure that decisions regarding ETDY are documented and maintained.

Recommendation 14: The FBI ensures that its ETDY practices are in accordance with Department policy related to MOU requirements.

Response: The FBI concurs with this recommendation.

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to the Justice Management Division (JMD), Federal Bureau of Investigation (FBI), Criminal Division, the Executive Office for United States Attorneys (EOUSA), and National Security Division (NSD). The collective response to the draft report is incorporated in Appendix 2.

The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations:

1. **JMD issue its new ETDY policy and require all DOJ components to integrate the new guidance into their operations.**

   Resolved. JMD concurred with our recommendation and stated in its response that it will issue the new ETDY policy in the near future together with an implementation plan. In addition, JMD stated that it will have a Department-wide meeting to help ensure Department-wide understanding of the new guidance. JMD also stated that the new policy will require components to develop a process to manage ETDY travel and/or incorporate the internal controls of the policy into component-level internal controls to ensure the policies governing ETDY are followed.

   This recommendation can be closed when JMD provides evidence that the new ETDY policy has been issued and that the policy requires all DOJ components to integrate the new ETDY guidance into their operations.

2. **JMD ensure that the ETDY policy requires travelers on ETDY to disclose if anyone in their household is receiving benefits for permanent or temporary relocation costs.**

   Resolved. JMD concurred with our recommendation and stated in its response that the new ETDY policy explains the lodging situations that affect the per diem amount that may be authorized. JMD also stated that the new policy requires that the travel authorizing official disallow or reduce per diem when applicable and based on the traveler's lodging situation. Further, JMD stated that the new policy requires the ETDY MOU to inform travelers that they are required to notify the authorizing officials when there is a change in their lodging situation.

   This recommendation can be closed when JMD provides evidence that the new ETDY policy requires travelers on ETDY to disclose if anyone in their household is receiving benefits for permanent or temporary relocation costs.

3. **JMD work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and develop controls to help ensure consistent handling of the certifications throughout the Department.**

   Resolved. JMD concurred with our recommendation and stated in its response that it will work with the appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute. JMD also stated that the new ETDY policy will include an explanation on the taxability of ETDY travel reimbursements.

   This recommendation can be closed when JMD provides evidence that it has worked with appropriate Department components and other relevant officials to ensure appropriate interpretation of the tax exempt certification statute and that it develops controls to ensure these certifications are consistently handled throughout the Department.

4. **JMD require DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014 and work with the components to properly correct these situations.**

   Resolved. JMD concurred with our recommendation. Therefore, this recommendation is resolved. However, JMD's response did not provide specific details on the actions planned or completed to address this recommendation.

   This recommendation can be closed when JMD provides evidence that it has required DOJ components to identify travelers who did not receive W-2 forms for taxable travel reimbursements for calendar years 2012 through 2014, and that JMD has worked with these components to properly correct these situations.

5. **EOUSA work with JMD and the relevant officials to determine the future and past taxability of the lodging provided at the NAC, update the associated policies if necessary, inform any affected employees, and remedy any amounts owed.**

   Resolved. JMD's response indicated that EOUSA concurred with our recommendation. Therefore, this recommendation is resolved. However, JMD's response did not provide specific details on the actions planned or completed to address this recommendation.

   This recommendation can be closed when EOUSA provides evidence that it has worked with JMD and relevant officials to determine the future and past taxability of the lodging provided at the NAC, updated the associated policies if necessary, informed any affected employees, and remedied any amounts owed.

6. **JMD ensure that the new ETDY policy contains a requirement for components to track and report ETDY activity on a regular basis.**

   Resolved. JMD concurred with our recommendation and stated in its response that the new ETDY policy requires components to have a process that tracks and manages the costs of ETDY. JMD also stated that the new ETDY policy requires components to conduct an annual review of their ETDY program, including a review of the terms of each MOU, the costs incurred for each person on ETDY travel, the cost-effectiveness of each ETDY assignment, and the component's level of compliance with the MOU terms. Further, the results of this review must be reported to the JMD Finance Staff within 45 calendar days after the end of each fiscal year, and the report must be signed by the Component Head or Principal Deputy.

   This recommendation can be closed when JMD provides evidence that the new ETDY policy has been issued and that it contains a requirement for components to track and report ETDY activity.

7. **JMD require DOJ components to develop the ability to automate ETDY travel data or put in place other controls to verify the ETDY data submitted by components.**

   Resolved. JMD concurred with our recommendation. JMD stated in its response that the new ETDY policy requires components to have a process that tracks and manages the costs of ETDY as outlined in the policy. JMD also stated that this process must ensure that travel allowances are reduced when appropriate, travelers are relocated when appropriate, and ETDY travel is terminated in accordance with this policy.

   This recommendation can be closed when JMD provides evidence that it has required that DOJ components develop the ability to automate ETDY travel data or has put in place other controls to verify the ETDY data submitted by components.

8. **JMD require DOJ components to reassess incidents of ETDY travel on an ongoing basis to ensure that it is in the best financial interest of the government.**

   Resolved. JMD concurred with our recommendation and stated in its response that the new ETDY policy requires components to have a process that tracks and manages the costs of ETDY. JMD further stated that the process must ensure that travel allowances are reduced when appropriate, travelers are relocated when appropriate, and ETDY travel is terminated in accordance with this policy.

The recommendation can be closed when JMD provides evidence that it has required DOJ components to reassess, on an ongoing basis, incidents of ETDY travel to ensure that they are in the best financial interests of the government.

9. **JMD ensure that new controls are enacted to promote sound and cost-effective decision-making for lengthy ETDY travel decisions.**

   Resolved. JMD concurred with our recommendation and provided in its response several controls from the new ETDY policy, such as guidance that extended assignments are not intended to substitute for permanent staffing, and ETDY cannot exceed 24 months unless approved by the Assistant attorney General for Administration.

   The recommendation can be closed when JMD provides evidence that new controls promoting sound and cost-effective decision-making for lengthy ETDY travel decisions have been enacted.

10. **JMD review its voucher payment procedures, identify any inconsistencies that lead to incorrectly categorized costs, and implement corrective action.**

    Resolved. JMD concurred with our recommendation and stated in its response that it will develop a plan to ensure ETDY travel costs are charged to the correct sub-object code.

    The recommendation can be closed when JMD provides evidence that it has reviewed its voucher payment procedures, identified any inconsistencies that lead to incorrectly categorized costs, and has implemented corrective action.

11. **JMD improve the controls over newly executed MOUs to help ensure DOJ components' ETDY MOUs contain language that is compliant with the applicable ETDY policy.**

    Resolved. JMD concurred with our recommendation and stated in its response that the new ETDY policy explains when MOUs are required, which individuals must sign the MOU, when MOU modifications are required, and what must be included in the MOU. JMD also stated that the policy includes a sample MOU template.

    The recommendation can be closed when JMD provides evidence that it has implemented controls over newly executed MOUs to help ensure DOJ components' ETDY MOUs contain language that is compliant with the applicable ETDY policy.

12. **JMD require the components to review the specific ETDY travel voucher exceptions we noted, determine if further action is necessary, and if appropriate, remedy those matters accordingly.**

Resolved. JMD concurred with our recommendation. Therefore, this recommendation is resolved. However, JMD's response did not provide specific details on the actions planned or completed to address this recommendation.

The recommendation can be closed when JMD provides evidence that it has reviewed the specific ETDY travel voucher exceptions we noted, determined if further action is necessary, and if appropriate, remedied those matters accordingly.

13. The Criminal Division ensure that the HCFU fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

Resolved. JMD's response indicated that the Criminal Division concurred with our recommendation and that it continues to work with JMD to determine the appropriate guidelines necessary in consideration of HCFU's unique mission. The Criminal Division also stated that it will evaluate ETDY for each HCFU traveler and ensure that such travel is performed in the most efficient and economical manner consistent with the new ETDY policy, and that it will continue to be in compliance with the FTR as it finalizes these guidelines. Also, the Criminal Division stated that both before and during the audit, the Criminal Division has instituted additional processes in the HCFU to ensure that decisions regarding ETDY are documented and maintained.

The recommendation can be closed when the Criminal Division provides evidence that it has developed and implemented guidelines that ensure the HCFU fully complies with the FTR by ensuring that travel is performed in the most efficient and economical manner, including evaluation of the appropriateness of ETDY, particularly in situations involving ongoing repetitive travel to the same location.

14. The FBI ensure that its ETDY practices are in accordance with Department policy related to MOU requirements.

Resolved. JMD's response indicated that the FBI concurred with our recommendation. Therefore, this recommendation is resolved. However, JMD's response did not provide specific details on the actions planned or completed to address this recommendation.

The recommendation can be closed when the FBI provides evidence that its ETDY practices are in accordance with Department policy related to MOU requirements.

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