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United States Senate

COMMITTEE ON THE JUDICIARY WASHINGTON, DC 20510–6275

BRUCE A. COHEN, Chief Counsel and Staff Director KOLAN L. DAVIS, Republican Chief Counsel and Staff Director

September 28, 2011

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530

Dear Attorney General Holder:

In light of the report from the Office of the Inspector General (OIG) that the Department is wasting money on \$16 muffins and \$8 coffee, I write to express my concern about other forms of waste and abuse at the Department. As I have said, with the economic realities our country is facing, permitting waste and abuse at the Department is inexcusable.

By way of illustration, take the case of Department employee Darryl Foster. In June 2009, Department employees filed a whistleblower complaint of various allegations against Foster, then serving as a Supervisory Test Coordinator for the Housing Testing Program in the Civil Rights Division's (CRD) Housing and Civil Enforcement Section (HCE).¹ Because the Housing Testing Program sends teams of investigators all over the country into places like restaurants, hotels, and housing facilities, there are large travel expenses incurred by the program.

The OIG subsequently initiated an investigation and issued a report in February 2010. They found that in late 2007 or early 2008, Foster began extending work travel to Miami at taxpayer expense to facilitate a physical relationship with a woman in Florida.² Foster's hotel costs and car rental charges were paid by the government even on the days he was not working, and he received per-diem each day he was there. Further, the woman was the president of an organization that Foster was responsible for approving

¹ U.S. Department of Justice, Office of the Inspector General, report on Darryl Foster, February 22, 2010. ² *Id*.

contracts with, putting him in the position of being able to approve taxpayer dollars going to her organization, a clear conflict of interest.³

The OIG also found that on another occasion, Foster flew a friend from the U.S. Virgin Islands to Las Vegas to meet him largely for recreational purposes, with airfare, per-diem, hotel costs, and car rental charges all being paid by taxpayers.⁴ Email correspondence between Foster and his friend from the Virgin Islands said such things as, "Make sure you leave me some golf time!!" and "Thought we were going to the Grand Canyon on Saturday??"⁵

The OIG report did not address all of the allegations against Foster or the extent of his abuse. Whistleblowers allege that Foster had engaged in a long pattern of travel abuse, yet the OIG report considered only these two instances. Test coordinator forms indicate what days the testing team was actually working, yet the OIG apparently did not compare these forms with Foster's travel vouchers. As a result, the OIG was not able to document exactly how many trips Foster had extended his travel to Miami, much less the countless other occasions when he was alleged to have extended his travel to other places on the taxpayer's dime. Additionally, the report only covers Foster's conduct through the date that a complaint was filed with the OIG. Foster's misuse of travel funds allegedly continued for months after the initial complaint was filed. It is unclear why the OIG did not address these issues despite being aware of these additional whistleblowers allegations.

Moreover, multiple employees had reportedly voiced their concerns to CRD management months prior to the OIG complaint, but nothing was done. Additionally, notwithstanding the OIG's findings, Foster only received a 7-day suspension and in mid-2010 was reassigned to a position in the Voting Section.⁶ He was apparently not demoted. Further, employees at the Department report that Foster actually took Housing Testing Program files with him when he was transferred to the Voting Section, thus carrying out of HCE the only way to document the full extent of his egregious misuse of travel funds.

However, the attached document suggests that since December 2009—even before the OIG report and Foster's transfer to the Voting Section—Foster may have been using his official Department charge card for personal use.⁷ Attachment 1 documents this government charge card abuse through as recently as February of this year, after the OIG investigation concluded and Foster was transferred out of the HCE.⁸ Notations on the document for the vast majority of the charges indicate, "I can offer no justification."⁹ The charges include hotel rooms in Florida and Washington DC, cash advances, gasoline, and other charges apparently unrelated to his work.

- ⁸ Id.
- 9 Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Department of Justice Office of the Inspector General to Charles E. Grassley, April 20, 2011, Appendix A. ⁷ Attachment 1.

Even if Foster was making the payments on the card from his own pocket, this would essentially constitute an interest-free personal loan. The fact that he was apparently being asked to justify the charges suggests that his supervisors were aware this was taking place, as I understand such an accounting is not a standard practice for employees with Department charge cards.

I have received no indication from the OIG that the Department required Foster to repay the funds he abused.¹⁰ Yet as you know, the Department is offering \$25,000 compensation to any Department employee accepting early retirement between October 1 and October 31. Even employees who the OIG finds have misspent government funds are presumably eligible for this early retirement payment. At a time when many Americans cannot find work, the prospect that employees like Foster might be able to take this retirement package with hardly any consequences resulting from their abuse is disturbing. In light of these facts, please explain:

- (1) Are employees typically required to repay taxpayer funds when the OIG finds them guilty of using official funds for personal purposes? If not, why is the Department either unable or unwilling to hold employees accountable for this sort of conduct?
- (2) How many other Department employees have been found to have misused government travel funds or travel cards and yet may be eligible to receive the \$25,000 bonus for early retirement?
- (3) What steps, if any, are available to the Department to offset early retirement bonuses against previously wasted funds?
- (4) What steps you are taking to ensure that the Housing Testing Program is no longer subject to such abuses in the future?
- (5) What is the Department's official disciplinary policy for individuals found to have misused government travel cards?
- (6) Does the Department generally control merchant codes to prevent travel cards from being used at certain categories of merchants?
- (7) Does the Department deactivate travel cards when employees are not on official travel?
- (8) Was Foster required to repay any taxpayer funds that the OIG found he is responsible for wasting?
- (9) Has there been any investigation into the misuse of Foster's government travel card?
- (10) Was any review conducted as to whether Foster would need his travel card when he was transferred to the Voting Section?

¹⁰ Department of Justice Office of the Inspector General to Charles E. Grassley, April 20, 2011, Appendix A.

Please answer each question, giving the number of the question along with its corresponding answer. Thank you in advance for ensuring your response arrives no later than October 11, 2011. Should you have any questions regarding this letter, please contact Tristan Leavitt of my staff at (202) 224-5225.

Sincerely,

Chuck Analy

Charles E. Grassley Ranking Member

Attachment

cc: Ms. Cynthia A. Schnedar Acting Inspector General U.S. Department of Justice

Attachment 1

Wednesday, December 23, 2009 Shell Oil (Mechanicsville, VA) \$ 25.85 Monday, December 28, 2009 Payment \$ 2,021.42 Wednesday, December 30, 2009 Courtyard by Marriott (Miramar, FL) \$ 336.59 Thursday, December 31, 2009 Courtyard by Marriott (Miramar, FL) \$ 336.59 Tuesday, January 05, 2010 Cash Advance Fee \$ 3.06 Tuesday, January 05, 2010 Cash Advance (Washington, DC) \$ 122.50 Friday, January 08, 2010 Payment \$ 1,666.53 Tuesday, January 12, 2010 ExxonMobil (Ladysmith, VA) \$ 49.77 Thursday, January 14, 2010 Cash Advance Fee \$ 3.00 Thursday, January 14, 2010 Cash Advance (Washington, DC) \$ 52.50 Thursday, January 21, 2010 Coastal Service Station (Woodbridge, VA) \$ 22.16 Friday, January 22, 2010 Cash Advance Fee \$ 3.00 Friday, January 22, 2010 Cash Advance (Alexandria, VA) \$ 103.00 Thursday, February 04, 2010 Cash Advance Fee \$ 3.00 Thursday, February 04, 2010 Cash Advance (Alexandria, VA) \$ 102.00 Monday, February 08, 2010 Hertz Rent-a-Car (Washington, DC) \$ 97.16 Tuesday, February 09, 2010 Payment \$ 2,586.91 Friday, February 26, 2010 Alex Beltway Liberty (Alexandria, VA) \$ 55.56 Friday, February 26, 2010 Arlington Meter Parking (Arlington, VA) \$ 2.00 Friday, March 05, 2010 Payment \$ 1,379.39 Friday, March 12, 2010 Cash Advance Fee \$ 7.05 Friday, March 12, 2010 Cash Advance (Springfield, VA) \$ 282.00 Tuesday, March 16, 2010 Shanghai Peking (Alexandria, VA) \$ 90.04 Tuesday, March 16, 2010 Payment \$ 2,016.01 Wednesday, March 17, 2010 7-Eleven (Mechanicsville, VA) \$ 54.95 Wednesday, March 17, 2010 Cash Advance Fee \$ 3.00 Wednesday, March 17, 2010 Cash Advance (Alexandria, VA) \$ 62.50 Monday, March 22, 2010 Samuel Adams Brewhouse (Washington, DC) \$ 20.00 Travel Card Activity Darryl Foster 2 of 7 **Transaction Date Description Amount Finance Charge Credit Payment** Monday, March 22, 2010 Cash Advance Fee \$ 3.00 Monday, March 22, 2010 Cash Advance (Washington, DC) \$ 52.50 Wednesday, March 24, 2010 DCA Reagan (Washington, DC) \$ 50.00 Thursday, March 25, 2010 United (San Antonio, TX) \$ 901.20 Thursday, March 25, 2010 United (San Antonio, TX) \$ 901.20 Thursday, March 25, 2010 Marriott (Hollywood Beach, FL) \$ 478.84

I can offer no justification

Inadvertent charge. Charge reversed.

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Withdrawal in prep for official travel Dinner at airport for official travel

Official travel to Birmingham, AL canceled

Inadvertent charge. Charge should have reversed.

Thursday, March 25, 2010 ExxonMobil (Alexandria, VA) \$ 58.28 Sunday, April 04, 2010 Fairfield Inn (Virginia Beach, VA) \$ 203.14 Sunday, April 04, 2010 Fairfield Inn (Virginia Beach, VA) \$ 215.23 Monday, April 05, 2010 Cash Advance Fee \$ 5.08 Monday, April 05, 2010 Cash Advance (Alexandria, VA) \$ 203.00 Sunday, April 11, 2010 Cash Advance Fee \$ 3.00 Sunday, April 11, 2010 Cash Advance (Lorton, VA) \$ 102.75 Tuesday, April 13, 2010 Cash Advance Fee \$ 3.00 Tuesday, April 13, 2010 Cash Advance (Washington, DC) \$ 102.50 Thursday, April 15, 2010 Courtyard by Marriott (Miami, FL) \$ 221.71 Friday, April 16, 2010 Chili's (Williamsburg, VA) \$ 72.39 Friday, April 23, 2010 Sunoco (Penns Grove, NJ) \$ 55.55 Friday, April 23, 2010 Cash Advance Fee \$ 4.08 Friday, April 23, 2010 Cash Advance (Lorton, VA) \$ 163.00 Saturday, April 24, 2010 Holiday Inn Express (Maspeth, NY) \$ 148.07 Monday, April 26, 2010 Hess (Fort Belvoir, VA) \$ 21.22 Tuesday, April 27, 2010 Cash Advance Fee \$ 3.00 Tuesday, April 27, 2010 Cash Advance (Alexandria, VA) \$ 101.50 Tuesday, April 27, 2010 Cash Advance Fee \$ 3.00 Tuesday, April 27, 2010 Cash Advance (Oxon Hill, MD) \$ 43.00 Tuesday, April 27, 2010 Rosa Mexicano (National Harbor, MD) \$ 49.03 Wednesday, April 28, 2010 Mike's American Grill (Springfield, VA) \$ 69.85 Travel Card Activity Darryl Foster 3 of 7 **Transaction Date Description Amount Finance** Charge Credit Payment Sunday, May 09, 2010 Seibert's (Oilville, VA) \$ 51.53 Sunday, May 09, 2010 Cash Advance Fee \$ 3.00 Sunday, May 09, 2010 Cash Advance (Alexandria, VA) \$ 102.50 Monday, May 10, 2010 Payment \$ 1,259.11 Thursday, May 13, 2010 Cash Advance Fee \$ 5.06 Thursday, May 13, 2010 Cash Advance (Hollywood, FL) \$ 202.50 Saturday, May 15, 2010 ExxonMobil (Fredericksburg, VA) \$ 10.23 Sunday, May 16, 2010 Ramada Inn (Fredericksburg, VA) \$ 78.05 Sunday, May 16, 2010 7-Eleven (Lorton, VA) \$ 17.43 Tuesday, May 18, 2010 Cash Advance Fee \$ 3.08 Tuesday, May 18, 2010 Cash Advance (Springfield, VA) \$ 123.00 Friday, May 21, 2010 Cash Advance Fee \$ 3.00 Friday, May 21, 2010 Cash Advance (Arlington, VA) \$ 42.25 Tuesday, May 25, 2010 Cash Advance Fee \$ 3.00

I can offer no justification

Inadvertent charge. Charge should have reversed. Inadvertent charge. Charge should have reversed.

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Tuesday, May 25, 2010 Cash Advance (Lorton, VA) \$ 62.75 Monday, June 07, 2010 Sunoco (Alexandria, VA) \$ 28.17 Monday, June 07, 2010 Cash Advance Fee \$ 3.00 Monday, June 07, 2010 Cash Advance (Bailey's Crossroads, VA) \$ 103.00 Thursday, June 10, 2010 Amoco (Alexandria, VA) \$ 14.98 Friday, June 11, 2010 Cash Advance Fee \$ 3.00 Friday, June 11, 2010 Cash Advance (Alexandria, VA) \$ 51.50 Saturday, June 12, 2010 Sunoco (Alexandria, VA) \$ 13.86 Wednesday, June 16, 2010 Cash Advance Fee \$ 7.08 Wednesday, June 16, 2010 Cash Advance (Alexandria, VA) \$ 283.00 Monday, June 21, 2010 Payment \$ 2,476.28 Saturday, July 03, 2010 Cash Advance Fee \$ 3.00 Saturday, July 03, 2010 Cash Advance (Virginia Beach, VA) \$ 103.00 Saturday, July 03, 2010 ExxonMobil (Virginia Beach, VA) \$ 54.04 Travel Card Activity Darryl Foster 4 of 7 **Transaction Date Description Amount Finance Charge Credit Payment** Monday, July 05, 2010 Outback (Largo, MD) \$ 13.07 Wednesday, July 07, 2010 Cash Advance Fee \$ 3.00 Wednesday, July 07, 2010 Cash Advance (Alexandria, VA) \$ 103.00 Friday, July 09, 2010 Cash Advance Fee \$ 3.00 Friday, July 09, 2010 Cash Advance (Pembroke Pines, FL) \$ 103.00 Sunday, July 11, 2010 Miami Beach Meter (Miami Beach, FL) \$ 5.00 Monday, July 12, 2010 Marriott (Hollywood Beach, FL) \$ 419.61 Thursday, July 15, 2010 Cash Advance Fee \$ 3.00 Thursday, July 15, 2010 Cash Advance (Alexandria, VA) \$ 102.50 Friday, July 16, 2010 Cash Advance Fee \$ 3.00 Friday, July 16, 2010 Cash Advance (Lorton, VA) \$ 43.00 Saturday, July 17, 2010 Cash Advance Fee \$ 3.00 Saturday, July 17, 2010 Cash Advance (Alexandria, VA) \$ 62.50 Wednesday, July 21, 2010 Cash Advance Fee \$ 3.00 Wednesday, July 21, 2010 Cash Advance (Alexandria, VA) \$ 42.50 Friday, July 23, 2010 Cash Advance Fee \$ 3.00 Friday, July 23, 2010 Cash Advance (Alexandria, VA) \$ 82.50 Sunday, July 25, 2010 Sunoco (Alexandria, VA) \$ 29.54 Sunday, July 25, 2010 Cash Advance Fee \$ 3.00 Sunday, July 25, 2010 Cash Advance (Alexandria, VA) \$ 41.50 Tuesday, August 03, 2010 Cash Advance Fee \$ 3.00 Tuesday, August 03, 2010 Cash Advance (Alexandria, VA) \$ 101.50

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Wednesday, August 04, 2010 Payment Reversal \$ 1,732.15 Wednesday, August 04, 2010 Payment \$ 1,732.15 Tuesday, August 17, 2010 Returned Check Fee \$ 25.00 Monday, August 23, 2010 Payment \$ 1,071.00 Friday, August 27, 2010 Verizon Refund (Credit) \$ 125.00 Thursday, September 02, 2010 Payment \$ 1,865.26 Travel Card Activity Darryl Foster 5 of 7 **Transaction Date Description Amount Finance Charge Credit Payment**

Monday, September 13, 2010 Spirit AI (Miramar, FL) \$ 39.95 Monday, September 27, 2010 Cash Advance Fee \$ 3.81 Monday, September 27, 2010 Cash Advance (Washington, DC) \$ 152.50 Tuesday, September 28, 2010 Cash Advance Fee \$ 3.00 Tuesday, September 28, 2010 Cash Advance (Woodbridge, VA) \$ 102.00 Tuesday, September 28, 2010 ExxonMobil (Woodbridge, VA) \$ 43.13 Wednesday, September 29, 2010 Cash Advance Fee \$ 3.00 Wednesday, September 29, 2010 Cash Advance (Alexandria, VA) \$ 42.50 Thursday, October 07, 2010 Courtyard by Marriott (Providence, RI) \$ 44.00 Monday, October 11, 2010 Springhill Suites (Virginia Beach, VA) \$ 103.57 Tuesday, October 12, 2010 Springhill Suites (Virginia Beach, VA) (Credit) \$ 103.57 Thursday, October 14, 2010 Residence Inn (Woodbridge, VA) \$ 293.70 Friday, October 15, 2010 Cash Advance Fee \$ 6.31 Friday, October 15, 2010 Cash Advance (Washington, DC) \$ 252.50 Tuesday, October 19, 2010 Payment \$ 1,920.29 Friday, October 22, 2010 Cash Advance Fee \$ 7.08 Friday, October 22, 2010 Cash Advance (Alexandria, VA) \$ 283.00 Tuesday, October 26, 2010 Spirit Al (Miramar, FL) \$ 15.00 Wednesday, October 27, 2010 Cash Advance Fee \$ 3.08 Wednesday, October 27, 2010 Cash Advance (Alexandria, VA) \$ 123.00 Thursday, October 28, 2010 Cash Advance Fee \$ 3.00 Thursday, October 28, 2010 Cash Advance (Fairfax, VA) \$ 42.50 Friday, October 29, 2010 Spirit Al (Miramar, FL) \$ 40.00 Friday, October 29, 2010 Houston's (Miami Beach, FL) \$ 71.28 Friday, October 29, 2010 Chevron (Dania, FL) \$ 41.49 Saturday, October 30, 2010 Olive Garden (Plantation, FL) \$ 68.83 Saturday, October 30, 2010 Cash Advance Fee \$ 3.00 Saturday, October 30, 2010 Cash Advance (Hollywood, FL) \$ 104.00 Travel Card Activity Darryl Foster 6 of 7 **Transaction Date Description Amount Finance**

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Late posting from official travel to Rhode Island Inadvertent charge. Charge reversed.

Inadvertent charge. Charge should have reversed.

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Charge Credit Payment

Sunday, October 31, 2010 Marriott (Hollywood Beach, FL) \$ 178.81 Sunday, October 31, 2010 American (Ft. Lauderale, FL) \$ 29.00 Sunday, October 31, 2010 American (Ft. Lauderale, FL) \$ 25.00 Monday, November 01, 2010 Marriott (Miami, FL) \$ 117.52 Wednesday, November 10, 2010 Cash Advance Fee \$ 3.00 Wednesday, November 10, 2010 Cash Advance (Washington, DC) \$ 102.50 Thursday, November 11, 2010 Sumo Japanese Steakhouse (Virginia Beach, VA) \$ 132.71 Saturday, November 13, 2010 ExxonMobil (Virginia Beach, VA) \$ 56.47 Monday, November 15, 2010 Cash Advance Fee \$ 3.00 Monday, November 15, 2010 Cash Advance (Washington, DC) \$ 103.00 Tuesday, November 23, 2010 Cash Advance Fee \$ 7.08 Tuesday, November 23, 2010 Cash Advance (Alexandria, VA) \$ 283.00 Saturday, December 04, 2010 Cash Advance Fee \$ 3.55 Saturday, December 04, 2010 Cash Advance (Norfolk, VA) \$ 142.00 Tuesday, December 07, 2010 Cash Advance Fee \$ 3.00 Tuesday, December 07, 2010 Cash Advance (Washington, DC) \$ 102.00 Friday, December 10, 2010 Payment \$ 1,376.60 Saturday, December 11, 2010 Renaissance Hotels (Baltimore, MD) \$ 165.76 Saturday, December 18, 2010 Cash Advance Fee \$ 4.08 Saturday, December 18, 2010 Cash Advance (Alexandria, VA) \$ 163.00 Wednesday, December 22, 2010 Cash Advance Fee \$ 3.00 Wednesday, December 22, 2010 Cash Advance (Alexandria, VA) \$ 103.00 Friday, December 31, 2010 Fairfield Inn (Chantilly, VA) \$ 139.52 Monday, January 03, 2011 Payment Reversal \$ 2,282.52 Monday, January 03, 2011 Payment \$ 2,282.52 Wednesday, January 05, 2011 Cash Advance (Alexandria, VA) \$ 62.25 Wednesday, January 05, 2011 Cash Advance Fee \$ 3.00 Thursday, January 06, 2011 Chick-fil-a (West Palm Beach, FL) \$ 16.33 Travel Card Activity Darryl Foster 7 of 7 **Transaction Date Description Amount Finance Charge Credit Payment** Thursday, January 06, 2011 Shell Oil (Okeechobee, FL) \$ 45.18 Saturday, January 08, 2011 Ft. Pierce Truck Stop (Ft. Pierce, FL) \$ 43,19 Thursday, January 13, 2011 Cash Advance (Alexandria, VA) \$ 283.00 Thursday, January 13, 2011 Cash Advance Fee \$ 7.08 Friday, January 14, 2011 Returned Check Fee \$ 25.00 Saturday, January 15, 2011 Chipotle (Virginia Beach, VA) \$ 33.04 Saturday, January 15, 2011 AJ Gators Sports Bar (Virginia Beach, VA) \$ 50.00

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Saturday, January 15, 2011 ExxonMobil (Lanexa, VA) \$ 10.51 Saturday, January 15, 2011 ExxonMobil (Lanexa, VA) \$ 64.95 Sunday, January 16, 2011 Chipotle (Virginia Beach, VA) \$ 7.13 Sunday, January 16, 2011 Chipotle (Virginia Beach, VA) \$ 23.15 Sunday, January 16, 2011 Sonic (Virginia Beach, VA) \$ 25.05 Wednesday, January 19, 2011 Sunoco (Alexandria, VA) \$ 20.00 Wednesday, January 19, 2011 Arlington Meter Parking (Arlington, VA) \$ 2.00 Wednesday, January 19, 2011 Arlington Meter Parking (Arlington, VA) \$ 2.00 Thursday, January 20, 2011 Cash Advance (Alexandria, VA) \$ 102.25 Thursday, January 20, 2011 Cash Advance Fee \$ 3.00 Monday, January 24, 2011 Payment \$ 2,752.52 Sunday, January 30, 2011 Residence Inn (Virginia Beach, VA) \$ 206.48 Friday, February 04, 2011 National Harbor \$ 5.00 Friday, February 11, 2011 Payment \$ 1,362.38 Monday, February 21, 2011 ExxonMobil (Woodbridge, VA) \$ 65.92 Sunday, February 20, 2011 Cash Advance (Alexandria, VA) \$ 63.00 Sunday, February 20, 2011 Cash Advance Fee \$ 3.00

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Inadvertent charge. Charge should have reversed.