

**A REPORT TO THE BOARD OF REGENTS OF  
THE SMITHSONIAN INSTITUTION**

**June 18, 2007**

**The Honorable Charles A. Bowsher**

**The Honorable Stephen D. Potts**

**A.W. "Pete" Smith, Jr.**

*"This new era also demands from public (as well as private) organizations increased fiscal accountability. We must use our resources efficiently and intelligently both to husband them and to underscore our credibility to those who provide them -- the government and our donors."*

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## EXECUTIVE SUMMARY

### **A. Overview**

The Independent Review Committee came to its task with a deep affection for the Smithsonian Institution.<sup>1</sup> It is the Committee's hope that its work will help restore the people's trust in the Smithsonian and bring to an end the adverse media and public attention of the past several months. Although the Smithsonian is in the midst of a governance crisis, the IRC believes the Institution itself appears sound and that its problems can be solved expeditiously if the Regents recognize the urgency of the situation and commit sufficient time and resources to correcting the matters. The Committee recognizes that the Board of Regents, through its Committee on Governance, has begun this process by developing an initial set of reform initiatives.

In reviewing the operations of the Smithsonian during the tenure of Lawrence M. Small as Secretary, with a particular focus on his compensation, benefits and expenses, the IRC has determined that the problem was not one merely of misunderstood guidelines, nor was it one only of poor decisions in spending Smithsonian funds on expensive or lavish travel, entertainment and personal needs. The problems go much deeper than this. Mr. Small's management style – limiting his interaction to a small number of Smithsonian senior executives and discouraging those who disagreed with him – was a significant factor in creating the problems faced by the Smithsonian today. In addition, Mr. Small limited the flow of information so as to prevent the Board from hearing criticism of his stewardship.

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<sup>1</sup> The Committee is referred to in this Report as the "IRC" or "Committee" and the Smithsonian as the "Smithsonian" or "Institution." References to the "Board" are to the Board of Regents of the Smithsonian.

The Committee, however, believes that the resignation of Mr. Small has not, by itself, remedied the problems at the Smithsonian. The Smithsonian must correct the underlying deficiencies in its organizational structure, decision-making and financial controls that allowed inappropriate management conduct to go undetected. As noted by the Office of the Vice President in its letter to the Committee, the current situation presents the Smithsonian with an opportunity to bring its management in line with best practices and to revamp the composition, selection and duties of the Board of Regents.

The root cause of the Smithsonian's current problems can be found in failures of governance and management. The governance structure of the Institution is antiquated and in need of reform. The relationship between the Board of Regents and Mr. Small, as Secretary, was contrary to effective oversight. At a time when organizations are expected to operate with increasing transparency, the operation of the Smithsonian, and especially the actions of Mr. Small and those who reported directly to him, had become increasingly secretive. Mr. Small created an imperialistic and insular culture in the Office of the Secretary in which the Secretary, rather than the Board, dominated the setting of policy and strategic direction for the Smithsonian. The Board of Regents allowed this culture to prevail by failing to provide badly needed oversight of Mr. Small and the operations of the Smithsonian. The Board did not look behind the tightly controlled data provided by Mr. Small. Nor did it engage in the active inquiry of Mr. Small and Smithsonian management that would have alerted the Board to problems.

As a result of the corporate scandals of the early part of this decade and the adoption of the Sarbanes-Oxley Act of 2002, boards of directors have become increasingly active in the oversight of management and in the development of strategy and long-term plans for organizations they control. Many nonprofit institutions have also updated their governance

practices following the adoption of Sarbanes-Oxley. Historically, the Smithsonian Board of Regents appears not to have taken a strong oversight role. Mr. Small's predecessor tried to increase the involvement of the Regents in the affairs of the Smithsonian, but found a limited interest on the part of the Regents in taking a more active role. During Mr. Small's tenure, some changes were made to the Smithsonian's governance that brought it more in line with best practices. Over the last several years, for example, the Board, to its credit, has held planning and strategy sessions and has established committees on audit, compensation and governance. These efforts, however, did not go far enough. The governance structure of the Institution needs more comprehensive reform. The Committee hopes that the findings and recommendations of this Report will aid the Smithsonian in its efforts at such reform.

**B. Summary of Committee Findings**

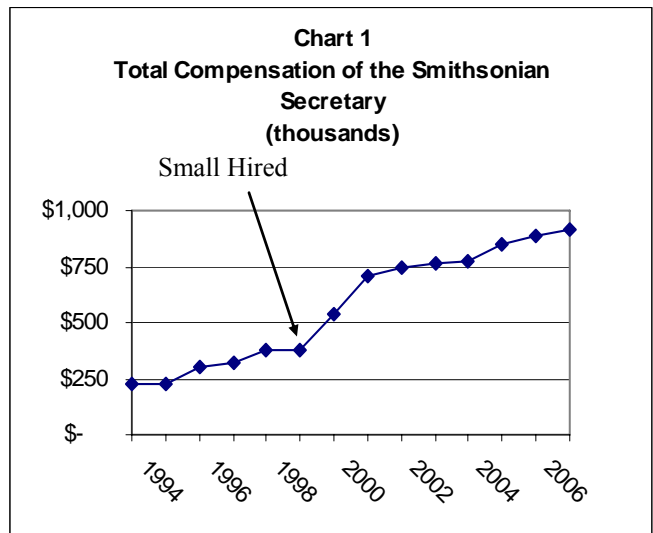
1. Mr. Small's Compensation Far Exceeded the Compensation of Prior Secretaries

Historically, the Secretary of the Smithsonian received total compensation near the mid-point of comparable positions, with modest annual increases. In contrast, Mr. Small's total starting compensation – \$536,100 – was forty-two percent higher than the compensation of his predecessor, and by the time he left office this year, Mr. Small's total compensation – \$915,658 – was almost 2½ times the compensation of his predecessor. What made Mr. Small's initial package so much larger than that of his predecessor was a \$150,000 annual payment styled as a housing allowance.

Mr. Small's initial compensation package would have been reasonable had the \$150,000 housing allowance been a true housing allowance and not simply additional salary. The language of Mr. Small's contract read as if this housing allowance was to reimburse Mr.

Small for his out-of-pocket housing costs in making his home available for Smithsonian business and social functions. An individual who played a key role in the initial financial negotiations with Mr. Small conceded that the language of the contract was misleading and that the housing allowance was, in fact, a “packaging device” for delivering Mr. Small additional compensation in a manner that would conceal the true size of his pay.

Another troubling aspect of Mr. Small’s compensation was the forty-five percent increase in base salary – from \$330,000 to \$480,000 – he received in 2001. The then-Executive Committee increased Mr. Small’s base salary, at his request, to put him in the 75<sup>th</sup> percentile of what Smithsonian management had chosen



as comparable institutions. The selection of the 75<sup>th</sup> percentile applied only to Mr. Small’s compensation. Compensation for the rest of the Smithsonian senior staff remained close to the 50<sup>th</sup> percentile.

2. The Terms of Mr. Small’s Compensation Were Not Fully Disclosed to the Board

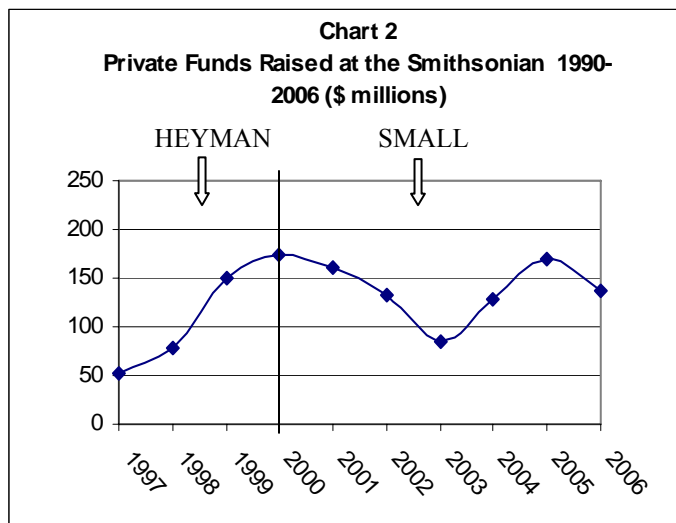
Mr. Small’s initial compensation package was negotiated between Mr. Small and a small number of Regents, none of whom is currently on the Board. The Committee found no evidence that the Board of Regents as a whole ever learned the terms of Mr. Small’s initial compensation package. In fact, contrary to the requirements of the Smithsonian’s governing documents, the full Board did not formally approve the terms of Mr. Small’s annual total compensation until

2004, and some Regents did not learn all the details of Mr. Small's compensation until they read about it in the recent press accounts.

3. Private Grants and Contributions and Business Revenues Have Declined During Mr. Small's Tenure, Making the Smithsonian More Reliant on Federal Appropriations and Grants

One of the reasons for hiring Mr. Small was the belief that his business background and connections would allow him to increase the Smithsonian's private fundraising and business income and thereby reduce the Smithsonian's reliance on federal monies. There is a perception among many of the individuals interviewed by the IRC and the public that Mr. Small succeeded in those efforts. Certain Regents have defended Mr. Small's actions by pointing to this success, going so far as to suggest that his excesses might be excused in light of the fact that he raised over a billion dollars for the Smithsonian. This justification is

wrong for two reasons. First, the IRC rejects the idea that success is in any way a license for inappropriate behavior. Second, as shown by Chart 2, private funds raised annually from donors have actually declined over the course of Mr. Small's tenure. Funds contributed by private sources peaked in 2000, and

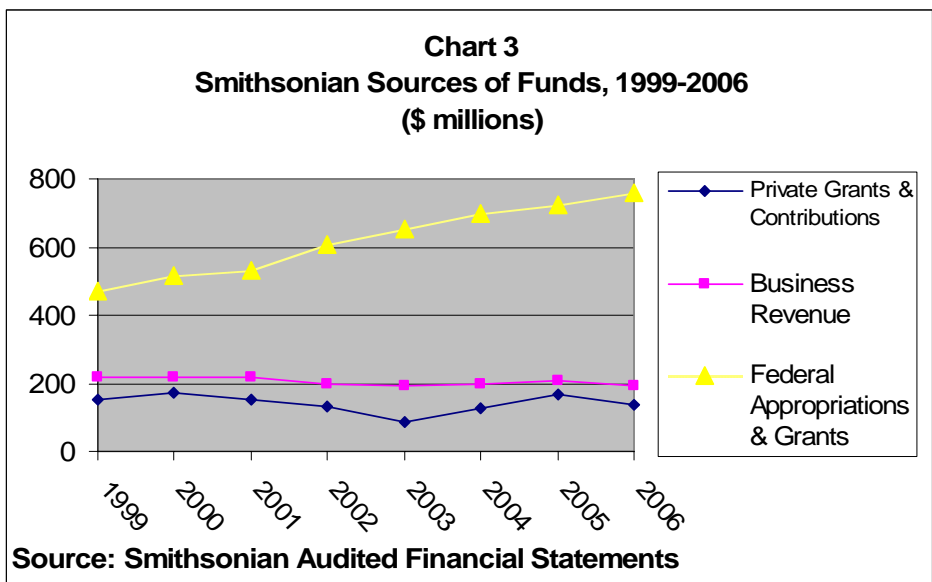


thereafter the amount of private funds committed to the Smithsonian began to decline, reaching a low of \$88 million in 2003. Although Mr. Small was involved in finalizing a gift of \$80 million from The Behring Foundation in 2000 and gifts of \$30 million and \$45 million from the Donald Reynolds Foundations in 2001 and 2005, respectively, those donations originated from the work

of others. Private funds raised in 2006 improved to \$132 million, but that figure is about ten percent lower than the amount raised in 1999, the year before Mr. Small took over. The evidence collected by the Committee regarding comparable nonprofits does not show a similar decline in fundraising over the same period.

As Chart 3 shows, business revenue has dropped by a similar percentage during Mr. Small’s tenure. This drop in business revenue has been further exacerbated by increased operating expenses (most notably senior executive salaries) at Smithsonian Business Ventures. In contrast, funds from federal appropriations and governmental grants have increased more than sixty percent over the same period. The Smithsonian informed the IRC that the increase in federal appropriations reflects, in significant part, the opening of two new museums and increased spending

for anti-terrorism measures following 9/11, and noted that the Smithsonian’s federal staff has decreased by about five percent since 2000. Nevertheless,



the net effect is that the Smithsonian became more dependent on taxpayer funds during Mr. Small’s tenure.

4. Mr. Small's Expenses Were Not Reviewed for Reasonableness

Nonprofit organizations like the Smithsonian must properly document expenses incurred in the conduct of the organization's activities to evidence reasonableness and relation to the organization's mission. With respect to Mr. Small's expenses, the Smithsonian failed to do so. Until the recent review completed by Cotton & Co., there had been no review of Mr. Small's expenses by either the Chief Financial Officer or internal or external auditors of the Smithsonian. Instead, Mr. Small and his staff exercised sole discretion in determining which expenses would be charged to the Smithsonian. At the beginning of 2000 and 2001, Mr. Small was given by his chief of staff signed blank expense authorizations. Thereafter, while the Smithsonian had detailed guidelines and policies for business expenses, Mr. Small exempted himself from these policies.

5. Mr. Small and the Deputy Secretary Have Been Absent from the Smithsonian for Substantial Periods Due to Vacation and Compensated Service on Corporate Boards

The records provided by the Smithsonian show that from 2000 through 2006 Mr. Small and Sheila P. Burke, the current Deputy Secretary, were absent from the Smithsonian for about 400 and 550 work days, respectively, as a result of vacation time and time spent serving on corporate and other boards and performing other non-Smithsonian-related duties. This level of absenteeism was not prohibited by the Smithsonian leave policy because Mr. Small and Ms. Burke were allowed unlimited leave. Mr. Small appears to have taken nearly 70 weeks of vacation over his seven years (or nearly 10 weeks per year). In addition, he spent 64 business days serving on for-profit corporate boards for which he earned approximately \$642,925 in cash compensation, \$3.3 million in stock compensation and \$1.8 million in stock option compensation.

Ms. Burke appears to have been out of the office for about 400 business days (or about one-quarter of the work days) during her tenure because of her service on boards and her other non-Smithsonian activities. For her corporate board service, Ms. Burke earned approximately \$1.2 million in cash compensation, \$3.5 million in stock compensation and \$5.6 million in stock option compensation. Her total compensation for outside board service was more than three times the compensation she received from the Smithsonian over the same period. The Committee is cognizant of her reputation for hard work, long hours, willingness to return phone calls promptly, and ready response to email, even when she is away from the office. Still, the IRC believes that any person who holds the job of Deputy Secretary and Chief Operating Officer should expect to spend full time at the Smithsonian without the distraction of extensive outside activities.

6. Mr. Small's Disposition Was Ill-Suited for the Position of Secretary

In selecting Mr. Small as Secretary, the Regents hoped that his experience in the business world would bring talents that complemented the Smithsonian's existing expertise in science and the arts. As one now looks back over his tenure, it is clear, however, that his attitude and disposition were ill-suited to public service and to an institution that relies so heavily, as the Smithsonian does, on federal government support. The mismatch between Mr. Small and the Institution appeared as early as the initial negotiations with Mr. Small when he made it clear that if he and his wife were not allowed to travel in first class, it would be a "deal breaker." Over the years, Mr. Small placed too much emphasis on his compensation and expenses. Rather than seeing this as an indication of the need for careful oversight, the Regents involved in Mr. Small's compensation, to the contrary, became complicit in Mr. Small's desire to maximize his personal income and have the Smithsonian pay his expenses.



7. The Board Exercised Inadequate Oversight Over Mr. Small

The Board frequently deferred to the Secretary, allowing him to run and dominate the meetings, set the agendas, and determine who would contact the Regents and what information would be provided them. With limited and controlled information provided by the Secretary, the Regents were unable to engage in real and effective debate. During Mr. Small's tenure, it appears that the Board reported to him rather than the Secretary reporting to the Board. The Committee was told by a Regent that Mr. Small "did not listen to the opinions of the Regents" and "did not seek input from the Regents in decision making." Another Regent commented that Mr. Small did not seek advice, only approval.

In the place of full Board oversight, the Executive Committee, on numerous occasions, agreed to compensation requests from Mr. Small without engaging in its own analysis of the reasonableness of those requests. In 2001, for example, as discussed above, the then-Executive Committee acquiesced to a request by Mr. Small for a forty-five percent increase to his salary without questioning the need for the increase and without consulting with the full Board. More recently, when asked, the Board retroactively approved actions of the Secretary that were contrary to Smithsonian guidelines and to contractual arrangements, in almost all situations without adequate investigation or analysis. The Board often minimized Mr. Small's mistakes, glossed over or ignored criticism of him, and offered post-hoc justifications for his improper acts even in the face of new revelations and Congressional scrutiny.

As early as 2001, there was public criticism of actions taken by Mr. Small that should have raised questions about his ability to manage the Smithsonian effectively. For example, several newspaper articles questioned Mr. Small's use of a privately chartered plane for Smithsonian business. Yet the minutes and transcripts of the Board meetings give no indication

that the Regents at the time ever discussed, let alone investigated, this or any other adverse comments. Had the Board done so, it would have learned that Mr. Small did not pay for the plane as he claimed, but rather the Smithsonian paid for it and management directed accounting staff to alter its accounting records after the fact.

The Board also had no involvement, either before or after the fact, in setting the terms of the employment for Ms. Burke, the Deputy Secretary and the Institution's number two official. (Ms. Burke became the Deputy Secretary in 2004. Prior to that, her title was Under Secretary for American Museums and National Programs.) The basic terms and policies of her service were set solely by Mr. Small and, in most instances, were known only to her and Mr. Small. Despite the fact that Ms. Burke disclosed her outside board service on her conflict of interest forms submitted to the Office of the Secretary, Mr. Small failed to provide these forms or the information regarding Ms. Burke's outside board service to the Board.

8. The "Gatekeepers" of the Smithsonian Were Marginalized

The General Counsel and the Inspector General of the Smithsonian should serve "gatekeeper" roles by monitoring compliance of senior management with laws and policies. The General Counsel and the Inspector General did not play these monitoring roles because Mr. Small isolated them from not only the Board of Regents but also from having any meaningful oversight of the Secretary's office. Additionally, over time Mr. Small significantly reduced the budget and staff of, among others, both the Office of General Counsel and the Office of Inspector General. Neither the General Counsel nor the Inspector General made adequate efforts to overcome the isolation from the Board or the diminution of their respective roles. The Chief Financial Officer was also ineffective in monitoring financial matters of the Office of the Secretary.

9. The Smithsonian's Internal Financial Controls and Audit Function Are Inadequate

Internal financial controls are systems of policies and procedures that create reliable financial reporting, promote compliance with laws and regulations and achieve effective and efficient operations. The Smithsonian's internal financial controls have been inadequate to achieve these goals for a number of reasons. First, the Smithsonian has not committed sufficient resources to the accounting and audit functions. Second, the Smithsonian lacks comprehensive and formal accounting procedures and policies. Third, the Smithsonian has not complied with its own policies and procedures with respect to accounting for expenses. Finally, the Smithsonian's outside auditor had not been vigorous in monitoring the Smithsonian's implementation of recommendations contained in its management letters until early 2007, when it finally noted that insufficient accounting resources and staff capacity at the Institution constituted a "reportable condition."

10. Smithsonian Business Ventures Has Operated with Insufficient Oversight from the Board or Senior Smithsonian Management

In the course of its review, the Committee has become aware of significant failures of internal controls and inappropriate conduct at Smithsonian Business Ventures ("**SBV**"), the Smithsonian division responsible for managing the commercial activities of the Smithsonian. Senator Grassley has indicated his desire for the Committee to conduct a review of the senior management of SBV and the appropriateness of compensation and benefits paid to senior management of SBV. While the Committee agrees that such a review is necessary and warranted, it is beyond the scope of the Committee's review. There appear to have been severe failures in oversight of SBV by Smithsonian senior management and the Board. It also appears that neither the Board nor the Smithsonian executives who sat on the SBV board, including the

Chief Financial Officer and the Deputy Secretary, provided oversight of SBV, even though all acknowledged the widespread allegations of inappropriate activity and failures of internal controls at SBV.

11. The Smithsonian Appears to Remain a Strongly Ethical Institution Despite the Problems with the Office of the Secretary and SBV

The ethics of an organization usually reflect the attitude and behavior of those in senior management. There was a clear indication that Mr. Small deemed himself outside the Smithsonian's otherwise recognized ethics standards. Accordingly, given the "tone at the top" set by the Office of the Secretary, one might expect to find the absence of internal controls and ethical lapses to be pervasive at the Smithsonian. While it did not undertake a comprehensive review, the Committee did not find evidence that indicated that there are major internal control issues at the Smithsonian as a whole, other than in the Office of the Secretary and at Smithsonian Business Ventures. Nor did the Committee find evidence to indicate that the strong ethical principles that have characterized the Smithsonian over the years have been compromised.

**C. Summary Of Recommendations**

The Committee recommends that, wherever possible, the Board of Regents should implement the following recommendations by reorganizing its internal governance structures and procedures. The Committee, however, offers no legal opinion as to whether these recommendations can be implemented solely by the Board of Regents. If the implementation of any recommendation requires legislative action, the Committee urges the Board of Regents to seek Congressional assistance promptly and for Congress to act with all deliberate speed to enact necessary legislation.

1. The Regents Must Act Quickly to Address the Governance Crisis

The current crisis of governance at the Smithsonian and the resulting loss of public confidence necessitate urgent action by the Regents. To restore public and Congressional confidence, the Regents must devote substantial time and resources over the next several months to considering and then implementing a comprehensive program to improve governance. With diligence, the IRC believes the necessary governance changes can be implemented by the end of the year.

2. The Expenses of Mr. and Mrs. Small Should be Subject to an Audit for Reasonableness and the Expenses of Senior Management Should Be Subject to Annual Audits

The Committee did not conduct a complete audit of Mr. Small's expenses. Rather, the Committee reviewed the work of Cotton & Co. and the supporting materials. The Cotton & Co. review was a limited review based on information and policy interpretations provided by the Smithsonian. Thus, there has been no independent audit of the expenses of Mr. Small. If for no other reason than potential tax liabilities, the Committee recommends that the Smithsonian have an independent auditor perform an audit of Mr. Small's expenses and those of his wife. The Committee believes this audit could be done expeditiously because a significant amount of information has already been collected by Cotton & Co. The Committee also recommends that the Audit and Review Committee of the Smithsonian undertake to have the expenses of senior management audited on an annual basis for compliance with Smithsonian policies and reasonableness.

3. The Compensation of the Secretary Should be Reasonably Competitive and Transparent and Take Into Account the Smithsonian's Unique Nature

The Committee recommends that compensation for the Secretary be competitive with similar CEO roles at comparable nonprofits focusing on a comparison group that includes a significant number of institutions (such as major state universities) that principally rely, as the Smithsonian does, on public funds. Historically, the Smithsonian appears to have had little difficulty in attracting qualified Secretaries at such compensation levels. It is the Regents' responsibility to determine this amount, and the Committee considers it beyond its mandate to provide specific guidance as to the appropriate compensation level. In determining this level, the Committee urges the Regents to consider developing a compensation philosophy that is transparent, reasonably competitive and reflective of the special nature of the Smithsonian. Working at the Smithsonian is a privilege. Serving as its Secretary is an honor. Compensation levels should reflect this. The Committee sees no reason why the Secretary should be given special travel privileges, perquisites or other benefits that are not available to other executives of the Smithsonian, except where the Board makes a determination in advance that such perquisites and benefits are reasonable and appropriate.

4. The Smithsonian's Policies Should Be Consistent With Federal Regulations and its Salary Schedule Should be Consistent With Government Salary Schedules

The Committee is concerned about the tendency of the Institution to embrace those federal regulations it finds convenient while ignoring others. For example, at times, the Smithsonian denies requests filed under the Freedom of Information Act ("**FOIA**") on the ground that it is not a federal entity, while, at other times, it grants FOIA requests. The IRC recommends that the Smithsonian affirmatively adopt policies to promote openness,

transparency and effective governance consistent with federal regulations, such as FOIA, the Privacy Act of 1974, Chief Financial Officer Act of 1990, the Sunshine Act, personal financial disclosure requirements, the Ethics in Government Act and conflict of interest rules. If the Smithsonian does not so act, Congress should consider appropriate legislation.

The IRC finds that there has been a marked disparity in the salary structure of the Smithsonian due, in part, to the fact that most employees are bound by government pay scales while others are employed by the Smithsonian trust and are paid on a separate scale. Additionally, the Committee learned that, for the purpose of raising the salaries of certain individuals who worked closely with the Secretary, positions were transferred from government pay scales to the trust.

To bring better balance to the Smithsonian's salary structure, the Committee recommends that the Smithsonian develop one comprehensive salary structure for all Smithsonian employees, rather than having a separate structure for trust employees. To the degree possible, this structure should align with the salary structure that incorporates standards of the federal senior executive service ("SES") or its equivalent. To be competitive in attracting talented museum curators or scientists, the Smithsonian should also be allowed, on a very limited basis, to exceed federal salary limitations in order to ensure that they can hire highly qualified individuals for key positions. Those paid above federal SES levels should be limited in number, perhaps 40 or 50. The needs of the Smithsonian when it comes to compensation should be well thought out, open to Congressional and public scrutiny and not arbitrary.

In determining the salaries of the Secretary and those who are paid above government salary limitations, careful attention should be paid to developing appropriate peer group analysis and maintaining reasonable ratios between these salaries and those governed by

federal pay structures. The IRC recognizes that there is significant competition for museum curators, directors and scientists, but it recommends that the Smithsonian strive to pay at the 50<sup>th</sup> percentile, recognizing that a job with the Smithsonian carries great prestige to the outside world and offers the opportunity to make substantial contributions to the arts and sciences. It is also recognized that there may be instances that call for travel and expense guidelines to be exceeded. These should be carefully controlled and should be subject to prior approval. The Board should maintain oversight of these instances and make sure that they are in fact the exception and not the rule. So that the Secretary and Deputy Secretary set an appropriate example, the expenses of the Office of the Secretary should be audited annually and reviewed by the Audit and Review Committee of the Board.

5. The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight

The Committee proposes the governing structure of the Smithsonian be reorganized by establishing a Governing Board as a major component of the Board of Regents that would take on primary fiduciary responsibility for overseeing the Smithsonian. Being a fiduciary carries with it a major commitment of time and effort, a reputational risk and, potentially, financial liability.

The IRC recognizes the historical value of having the three branches of government represented on the Board. Fiduciary constraints, however, require that the Smithsonian be run by a governing board whose members act as true fiduciaries and who have both the time and the experience to assume the responsibilities of setting strategy and providing oversight. Time is a major factor. For an organization as complex as the Smithsonian and with a budget surpassing \$1 billion a year, the Regents should expect to meet at least six times each



year. As discussed further below, the Committee recognizes and agrees that the governmental Regents play an important substantive, as well as symbolic, role at the Smithsonian.

The establishment of a Governing Board would in many ways formalize the Smithsonian's informal governance structure in which a "Committee of the Whole" meets in advance of the Board of Regents meeting to have a vigorous and probing discussion of issues requiring Board consideration. Under this present system, the Board of Regents meetings that follow have been formal proceedings to approve what had been discussed by the Committee of the Whole. The proposal of the IRC would formalize this process by establishing within the Smithsonian's governance documents a recognition that the Governing Board members would be the Regents responsible for the oversight of the Smithsonian and its management.

The Governing Board should have its own Chairman who would handle issues requiring the attention of the Board where items would be discussed and debated and where reports would be received from officers such as the Inspector General, Chief Financial Officer, General Counsel, Ethics Officer and museum and scientific project leaders. The IRC believes strongly that an organization with a budget as large and with operations as complex as the Smithsonian requires the services of a chairman who can devote far more time to the operations of the Board than can the Chief Justice.

While meetings of the Governing Board should be open to those whose knowledge or reports are important to deliberations of the Governing Board, the Board should reserve, at every meeting, time for an executive session where issues involving management, including the Secretary's performance, can be freely and openly discussed without the presence of employees. The Committee also recommends that the Executive Committee be enlarged to five members and its activity limited in practice to handling routine affairs of the Board between

meetings and when special meetings, either in person or telephonically, cannot be arranged. All actions of the Executive Committee should be presented to the full Governing Board for review.

6. The Role of the Chief Justice and Vice President Should Be Clarified

Historically, the Chief Justice has been elected to serve as the Chancellor. In that role, the Chief Justice would preside over the second part of the Board meeting where discussion and formal votes would be taken on those issues requiring action of the Board of Regents. Under the IRC proposal, however, the Chief Justice would not be considered a fiduciary Regent. Only fiduciary Regents would vote. The IRC recommends such a unique structure because it believes the historic role played by the Chief Justice in governance of the Smithsonian should not lightly be discarded and because the Chief Justice has made it clear he wishes to remain associated with the Institution. The Committee believes, however, that if governance of the Smithsonian is to be updated, it will require a commitment of time on the part of every Regent that far surpasses that which has been expected in the past. The Committee also questions if it is appropriate for the Chief Justice to have fiduciary obligations to a separate entity, even if that entity is closely linked to the government, and to assume the legal and reputational risks associated with being a fiduciary. The Committee believes that it is not feasible to expect the Chief Justice to devote the hours necessary to serve as a fiduciary Regent.

The same situation applies to the Vice President. Under the IRC's proposal, the Vice President would continue to serve as a Regent in a non-fiduciary capacity, and would chair meetings of the Board in the absence of the Chief Justice. If neither the Chief Justice nor the Vice President were present at a meeting of the Board, the Chairman would preside.

7. Congressional Regents Should Accept Fiduciary Responsibilities

A clear understanding needs to be reached regarding the role of the Congressional Regents. Service as a Regent must require that all members of the Board, including members of Congress, be willing and able to assume a role with clear fiduciary responsibilities and to devote the time necessary to carry out those duties personally. So that there will be neither an actual nor an appearance of conflict of interest, the IRC believes that any Congressional Regent who serves on one of the Congressional authorizing or appropriations committees with authority over the Smithsonian should recuse himself or herself from Congressional votes involving Smithsonian financial matters.

8. The Board Should be Expanded or Reorganized to Allow for the Addition of Regents with Needed Expertise

The Board must expand the level of expertise among the Regents on key issues, especially financial management and facilities and museum management, and ensure that the Regents who are appointed have sufficient time and attention to dedicate to the Smithsonian. To achieve this expansion of current expertise and ensure that Regents are active and engaged, the Committee recommends the Regents consider the following: (1) if current Regents have sufficient time and interest in continuing to serve; (2) adding to Board Committees – such as Audit and Review, Governance and Compensation and Human Resources – non-Regent members with special expertise; (3) employing outside experts to advise the Board and its Committees in specific subject areas; and (4) increasing the total number of citizen Regents from 9 to 11 by either adding two additional citizen Regents or reducing the number of Congressional Regents from six to four - two from the House and two from the Senate.

To make sure that the Smithsonian Board is made up of individuals capable of providing the necessary expertise, the Regents should adopt a nominating process that allows for a broader field of candidates. In looking at candidates, those charged with picking future Regents should note the necessity for expertise in financial management, investment strategies, audit functions, governance, compensation, and facilities management, as well as an interest in and a devotion to the arts and sciences. Contributions to the Smithsonian should not be the determining factor for service on the Board, but only one of many factors considered in the selection of Regents. Care should be taken to avoid appointing Regents who have clear personal and professional ties to the Secretary that may compromise the Board's independence.

In addition, if the Smithsonian desires to have positions for individuals that honor them for their contributions to the arts and sciences, including their financial generosity, it should establish non-fiduciary advisory boards for the Institution in general as well as for its various museums and divisions. The National Board, now primarily a development group, could have its scope expanded. The formerly active but now moribund Smithsonian Council could be revived to bring together distinguished scientists, academics, and museum directors to advise the Smithsonian and its constituent parts on programs, policy, and long range planning. Having both a vibrant Board and Council should help curb the extensive criticism the Smithsonian received during recent years regarding the conditions on certain donations and the scope and content of certain shows and displays.

9. Internal Financial Controls, Audit Functions and the Role of the General Counsel and Inspector General Must be Strengthened

The Smithsonian's system of internal controls and audit needs to be strengthened through additional resources, adoption of best practices and retention of personnel with

substantial experience in the financial and audit area. In February 2007, KPMG identified the inadequacy of the Smithsonian's accounting staffing and resources as a "reportable condition." The Committee understands that the Smithsonian is in the process of selecting an outside auditor, and the Committee recommends that the Smithsonian expeditiously implement the recommendations of this auditor, as well as those recommendations contained in prior management letters. In addition, the Committee recommends that (1) the Smithsonian provide the General Counsel's office and Office of the Inspector General with the necessary tools and resources to perform their gatekeeper and guardian functions, (2) the General Counsel serve as the Smithsonian's corporate secretary and (3) the Smithsonian ensure vigorous compliance with the Inspector General Act.

10. Smithsonian Executives Should Be Permitted to Participate in Only Nonprofit Board Activities Subject to Prior Approval

As a general rule, the Smithsonian has been careful in monitoring the outside work of its employees. The exceptions have been Mr. Small and the Deputy Secretary, both of whom have been allowed to collect significant compensation for service on the boards of for-profit corporations. As discussed above, these outside commitments have taken these individuals away from the Smithsonian during working hours for significant periods of time. The Board must develop a uniform policy on outside work. The IRC recognizes that arguments can be made in favor of allowing an organization's senior executives to serve on the boards of for-profit corporations. The benefits of doing so, however, accrue primarily to the individuals and only secondarily to the Institution. Accordingly, the IRC recommends that the Board prohibit its executives from serving on the boards of for-profit corporations.

With respect to nonprofit boards, the Regents should control and require prior approval of any outside activities, including service on any other professional service boards and teaching and lecturing obligations, weighing carefully the time commitments needed and the benefits to the Smithsonian. Any compensation received by any Smithsonian employee for service on any outside board or organization should not be kept by the individual, but should be turned over to the Smithsonian for the benefit of the Institution.

11. The Selection of the Next Secretary Must Reflect the Governance Challenges Facing the Smithsonian

Being Secretary is a difficult and time consuming job. The Secretary oversees a complex amalgam of museums, research centers, a zoo, retail shops, restaurants and buildings. The Secretary is the caretaker for one of the great names in the science and arts. It is also a job with great challenges, prestige, and opportunities to have a lasting mark on our national heritage. Business skills are valuable to the Smithsonian and efforts to introduce business planning and measurement tools should be encouraged. But what must be avoided in picking the next Secretary is the manner in which Mr. Small operated. The Secretary must work for the Board. The Secretary must set the ethical tone, not sidestep it. The operations of the Smithsonian, especially the Secretary's office, should be open and transparent.

12. Achieving Effective Oversight and Governance at Nonprofit Organizations May Ultimately Require Legislative Action

Unfortunately, the problems at the Smithsonian are not unique. As the media and Congressional oversight committees have made clear, there have been similar problems at several large tax-exempt organizations, including major museums and universities, not to mention the income and expense excesses and governance issues at for-profit companies. This raises the issue of effective management of nonprofits and how governance at these entities

should be structured, the responsibilities of their boards of directors and trustees, and how oversight of these organizations should be provided. The IRC believes that boards of nonprofits – especially large nonprofits – should move to reform their governance structures to bring them into line with best practices that have been well documented. These include the financial management and audit requirements in the Sarbanes-Oxley legislation, as well the recent Securities and Exchange Commission requirements for disclosure of the total compensation of senior executives. Some nonprofits have made progress in these areas, while others have not. Failure to take voluntary action will likely lead, ultimately, to action by Congress, state legislatures, and the courts to impose reforms from without, just as was done in the case of the corporate world.

## **BACKGROUND ON INDEPENDENT REVIEW COMMITTEE**

### **A. Formation of IRC**

In February 2007, *The Washington Post* began a series of articles reporting the history of compensation and benefits for Lawrence M. Small, Secretary of the Smithsonian Institution. Beyond these news stories, Senator Charles Grassley, R-Iowa, the Ranking Minority Member of the Senate Finance Committee, posed a number of specific questions to the Smithsonian about the compensation and benefits granted to Mr. Small, and asked for a number of documents related to these matters.

Following the initial news stories and the letter from Senator Grassley, Roger Sant, the Chair of the Executive Committee of the Board of Regents asked Charles A. Bowsher, former Comptroller General of the United States, to chair a committee to review issues raised by the news reports and by Senator Grassley. Mr. Bowsher was appointed by President Reagan and served as Comptroller General of the United States and as head of what was then known as the General Accounting Office for fifteen years between 1981 and 1996. Before that he was associated with Arthur Andersen & Co. for 25 years except for four years when he served under the administrations of former Presidents Lyndon Johnson and Richard M. Nixon as Assistant Secretary of the Navy for Financial Management.

Mr. Bowsher agreed to chair such a committee on condition that he would be allowed to choose other members of what became known as the Independent Review Committee and that the Committee be allowed to select counsel of its own choice to assist in the review. When these requests were accepted, Mr. Bowsher asked these two individuals to join him on the IRC:

- Stephen D. Potts is chairman of the Ethics Resource Center. He served as director of the U.S. Office of Government Ethics under Presidents



George H.W. Bush and William J. Clinton between 1990 and 2000. He previously served as a partner at the Washington law firm of Shaw, Pittman, Potts & Trowbridge.

- A.W. “Pete” Smith, Jr. is a retired executive with extensive experience in both the private and public sectors. He served as chief executive officer of the Private Sector Council, a nonprofit organization dedicated to improving the management of the federal government and previously served as president and chief executive officer of Watson Wyatt Worldwide, human resource consultants, where he worked for 30 years.

To assist the IRC with its inquiry, Mr. Bowsher engaged the services of Paul Martin Wolff and Stephen P. Sorensen of Williams & Connolly and James P. Joseph of Arnold & Porter, LLP. Cleve E. Corlett, retired director of external affairs of GAO, was retained as a consultant. The Smithsonian Board of Regents formally announced the creation of the IRC on March 19, 2007.

From the beginning, the Committee insisted that it be granted unfettered access to documents and that it be allowed to interview current employees of the Smithsonian Institution. The Smithsonian and its counsel have worked diligently to provide all information requested by the Committee. In addition, the Committee made it clear that, while this report would be submitted for comment to the Regents, the Committee would retain authority for the final content of this report.

**B. Scope of Review**

The Board of Regents asked the Committee to conduct an independent examination of the Secretary's compensation and expenses and related Smithsonian governance. The following areas were beyond the IRC's purview and so were not examined by the IRC:

- Management of the Smithsonian physical operations;
- Management of the Smithsonian museums or research programs;
- Smithsonian Business Ventures or any retail operations of the Smithsonian;
- General policies and systems for Smithsonian personnel; and
- General financial controls and systems.

The IRC did not conduct an audit of the Secretary's expenses. The Committee reviewed the report prepared by Cotton & Co., as well as drafts of that report and the materials relied upon by Cotton & Co. in preparing its report. Cotton & Co. did not look behind those materials or do any testing, nor did the Committee. Therefore, the Smithsonian has yet to determine whether these expenses of the office of the Secretary were incurred for Smithsonian business purposes and were reasonable. It would be prudent for the Smithsonian to have an independent auditor make such a determination to avoid any potential adverse tax consequences.

**C. Review Process**

The IRC received the full cooperation of the Smithsonian, its employees and Regents. The IRC examination included a review of over 15,000 pages of documents and 46 in-person or telephonic interviews. The IRC met with all of the current Regents except for the Vice President, whose office, however, sent the Committee a thoughtful letter raising a wide range of

governance issues.<sup>2</sup> In addition, the Smithsonian facilitated access to former Board members, current and former employees and other stakeholders. All of the people interviewed by the IRC were cooperative and forthcoming with information. Interviewees also were advised that specific comments would not be ascribed in this report to any named individuals. Two individuals – Lawrence Small and Mr. Small’s personal assistant – did not accept the invitation to meet with the IRC.<sup>3</sup>

Documents were obtained from a variety of sources. The Smithsonian provided, among other items, Board minutes, correspondence, financial materials and internal governance documents. The IRC also reviewed legislative materials relating to the Smithsonian and applicable statutory provisions. In addition, the IRC consulted legal, academic and other professional sources, materials obtained from leading governance-related organizations, governance-related materials from other nonprofit organizations and studies of federally chartered nonprofits and other federally chartered entities.

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<sup>2</sup> Exhibit 1.

<sup>3</sup> The Committee invited Gary Beer, the Chief Executive Officer of SBV, to meet with the Committee in early May. The Committee did not receive a response from Mr. Beer until June 12, 2007, by which time the Committee was finalizing its review. Mr. Beer’s counsel provided the documents attached as Exhibit 2.

## **STANDARDS FOR REVIEW**

### **A. The Smithsonian's Legal Status**

The Smithsonian is a trust instrumentality that was established by Congress in 1846 to hold in trust property donated by James Smithson and to carry out the provisions of his will for the “increase and diffusion of knowledge.”<sup>4</sup> Like other quasi-governmental entities, the Smithsonian, though a creation of federal law, has an independent organizational existence and is not an agency of the United States government.

The legal status of the Smithsonian has been raised periodically in lawsuits against the Smithsonian. Federal courts have considered the Smithsonian to be an establishment, agency or authority of the federal government in some circumstances, but not others.<sup>5</sup>

The Smithsonian is unique among quasi-governmental organizations in that, while most of its employees are treated as federal employees with all the protections, benefits and restrictions applicable thereto, a limited number of employees are considered to be employed by the Smithsonian trust.

The Smithsonian's main source of funds is the federal government, which currently provides more than seventy percent of the Smithsonian's budget. This reliance on federal funding has been increasing in recent years.

### **B. Governance and Applicable Fiduciary Duties**

The structure, organization, management and oversight of the Smithsonian were established by federal statute in 1846, providing that the Board of Regents shall be the governing

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<sup>4</sup> The Smithsonian Act of August 10, 1846, as amended and codified, 20 U.S.C. §§ 41-67.

<sup>5</sup> For example, the Smithsonian has been deemed to fall within the definition of “federal agency” for purposes of the Federal Tort Claims Act, and so entitled to immunity against a defamation action under that statute. See Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Inst., 566 F. 2d. 289 (D.C. Cir. 1977) (*en banc*).

body.<sup>6</sup> The Board has the responsibility for appointing the Secretary, who is charged with managing the operations of the Smithsonian.

Unlike the vast majority of nonprofit organizations whose governance is informed by applicable state statutes and common law of fiduciary duties, there is no developed body of federal common law setting forth the duties and obligations of the Board. Nonetheless, it is clear that the Regents are fiduciaries of the Smithsonian. First, the Regents are trustees charged with managing the original Smithsonian trust for the benefit of the American people.<sup>7</sup> Second, the Regents are analogous to directors of a nonprofit organization and therefore must fulfill the fiduciary duties of directors. While trustees and directors are both subject to duties of loyalty and care, the trustee is expected to satisfy a higher standard with respect to both duties.<sup>8</sup> The fiduciary duties of the Regents are spelled out clearly in Smithsonian Directive 150:

The Board of Regents bears the responsibility of the United States as trustee for carrying out the Smithsonian bequest and the public trust for which it provided. The primary obligation of the Board of Regents is to manage the resources of the Institution for the benefit of all mankind.<sup>9</sup>

The standards applied to the Regents derive from trust law:

A trust is a fiduciary relationship whereby a trustee holds and administers property for stated purposes on behalf of named beneficiaries. A trustee who holds legal title to trust property can use that property only in accordance with trust purposes to serve trust beneficiaries. In addition, a trustee must exercise prudent oversight of trust assets, keep strict accounts, make

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<sup>6</sup> 20 U.S.C. §§ 41-67.

<sup>7</sup> A trustee has a “fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another.” RESTATEMENT (SECOND) OF TRUSTS 2 (1957).

<sup>8</sup> See George B. Bogert & George T. Bogert, THE LAW OF TRUSTS AND TRUSTEES §394 (Rev. 2d 1994) (higher standard of care and stricter duty of loyalty generally imposed upon trustees under trust law than on trustees or directors under nonprofit corporation statutes).

<sup>9</sup> SMITHSONIAN DIRECTIVE 150, Smithsonian Institution Origins, Governance, and Relationship to the Federal Government (April 16, 1996), attached as Exhibit 3.

every effort to further trust purposes, and account for stewardship of the trust to all proper authorities.<sup>10</sup>

The duties required of one in such a fiduciary capacity are well established in the law. The duty of care generally describes the level of attention required of a director in all matters related to the organization.<sup>11</sup> This duty of care is perhaps more accurately described as a “duty to be informed.” A director has the responsibility to become informed about an issue before making a business decision relating to the issue.<sup>12</sup> A director will fulfill the duty of care if, prior to making a decision, he or she seeks out and considers all material information reasonably available to him or her. To fulfill the duty of care, the directors should follow deliberate procedures and consult with appropriate committees, officers or employees of the organization or other outside experts in making corporate decisions. This often means going beyond what is provided to the board by in-house staff, including consulting with outside experts, talking directly to, and questioning, employees with knowledge of the facts and, above all, asking thoughtful and probing questions. Board members may not simply rely on the word of senior management without further inquiry.

The duty of loyalty requires a director to act in the interest of the entity rather than in the personal interest of the director or some other person or organization.<sup>13</sup> More importantly, the duty of loyalty encompasses an obligation of directors and key employees with financial or other decision-making authority to avoid conflicts of interest. For a director, a violation of this duty may result in personal liability for a breach of fiduciary duty. For the organization, such a

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<sup>10</sup> *Id.*

<sup>11</sup> *See* 3A William Meade Fletcher, FLETCHER CYCLOPEDIA OF THE LAW OF CORP. § 1029 (duty of care requires that directors perform their obligations with a minimum standard of care).

<sup>12</sup> *See id.* § 1034.80 (director’s failure to make a reasonable inquiry may constitute breach of duty of care).

<sup>13</sup> *See id.* § 837.60 (duty of loyalty mandates that best interest of the corporation take precedence).

breach may allow a court to void the corporate transaction in which a conflict was present.<sup>14</sup> There have been no allegations, nor is the IRC aware of any evidence whatsoever, that any Regent violated this duty of loyalty.

These duties of care and loyalty are heightened for the Regents due to their status as trustees of the Smithsonian trust. In short, Regents owe the highest possible fiduciary duty to the Smithsonian and the American people.

### C. **Applicable Tax Laws and Principles**

The Smithsonian is treated as an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“**Code**”). Accordingly, certain provisions of the Code dealing with compensation and expenses apply to the Smithsonian.

Code section 4958 imposes a tax on excess benefit transactions for those organizations which are exempt from taxation under Code sections 501(c)(3) or 501(c)(4).<sup>15</sup> In general, an excess benefit transaction is any transaction in which an economic benefit (including compensation) is provided to or for the use of any “disqualified person,” if the value of the economic benefit provided to the disqualified person exceeds the value of the consideration (including the performance of services) received by the organization in return for such benefit. The intermediate sanction excise tax, therefore, may be imposed on a senior executive who is paid excess compensation by a nonprofit organization, with compensation including not just base salary, but all other forms of compensation, including bonuses, benefits, and deferred compensation.

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<sup>14</sup> *See id.* § 916 (transaction voidable where unfair to the corporation or entered into in bad faith).

<sup>15</sup> *See also* Treas. Reg. § 53.4958-1T *et seq.*

The specific excise taxes imposed by section 4958 are the following:

- On the disqualified person who engages in an excess benefit transaction, twenty-five percent of the excess benefit amount;
- On the disqualified person, two-hundred percent of the excess benefit amount, if the excess benefit transaction is not corrected after notice from the IRS; and
- On any organization manager who knowingly participates in an excess benefit transaction (including individual board or compensation committee members who approve the payment of excessive compensation to a disqualified person), ten percent of the excess benefit amount. (The aggregate tax imposed on all organization managers for any one excess benefit transaction may not exceed \$20,000.)

The Code requires that travel expenses not be “lavish or extravagant under the circumstances,” though “lavish” and “extravagant” remain undefined in the tax code or in regulations.<sup>16</sup> Travel expenses that are paid or reimbursed but not properly documented or “lavish or extravagant” are treated as taxable compensation to the individual so benefiting. In addition, the payment of travel for an employee’s spouse may also be treated as taxable compensation. If a public charity provides a compensation benefit to a disqualified employee or his or her spouse, the charity is required to provide contemporaneous written substantiation (e.g., a Form W-2, Form 1099 or written employment agreement) of its intent to treat such payment as compensation. If the organization fails to indicate in such a contemporaneous writing that it is providing an economic benefit in return for services, the compensation paid will be treated

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<sup>16</sup> Code § 162(a)(2); Treas. Reg. §§ 1.162-2, 1.162-17.



automatically as an “excess benefit.”<sup>17</sup> Board members and executives of charitable organizations who approve or receive excessive travel benefits are subject to penalties under the Code.<sup>18</sup> The audit committee should have responsibility for ensuring compliance. The IRS has provided detailed guidance for managers of charitable organizations in avoiding lavish, extravagant, or excessive expenditures.<sup>19</sup>

**D. Smithsonian Policies**

The Smithsonian has its own compensation and expenses guidelines. In particular, the Smithsonian has a travel policy that requires all Smithsonian employees to comply with the Federal Travel Regulation, as well as policies and procedures for the use of the various Smithsonian funds. The Smithsonian also has a conflicts of interest policy.

**E. Best Practices in Nonprofit Corporate Governance**

Governance of nonprofits has come into focus in recent years following the passage of the Sarbanes-Oxley Act of 2002 and in light of recent conflicts of interest and improprieties at prominent nonprofit organizations. The last few years have witnessed substantial work in corporate governance of nonprofits, and the IRC’s review and recommendations benefited from this work.<sup>20</sup>

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<sup>17</sup> Code § 4958(c)(1)(A); Treas. Reg. § 53.4958-4(c)(1).

<sup>18</sup> Code §§ 4941, 4958.

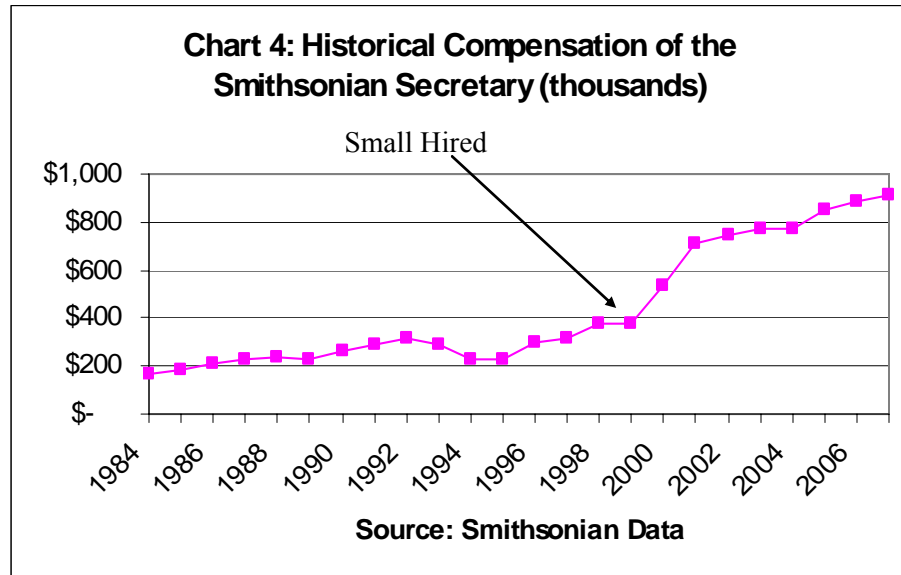
<sup>19</sup> IRS Publication 463, “Travel, Entertainment, Gift and Car Expenses” (2006).

<sup>20</sup> See, e.g., Panel on the Nonprofit Final Report to Congress Nonprofit Sector, *Strengthening Transparency, Governance and Accountability of Charitable Organizations*, 2005.

## COMPENSATION AND PERFORMANCE OF MR. SMALL

Allegations of excessive compensation paid to Mr. Small were part of the impetus for the formation of the IRC. In reviewing the compensation of Mr. Small, the IRC found it instructive to consider the compensation of the Smithsonian Secretary over recent history.

Historically, compensation for the Smithsonian Secretary was generally conservative. As Chart 4 shows, from the mid 1980's through the hiring of Secretary Small in 2000, the base



salary of the Secretary increased at a relatively modest pace. Secretary Robert M. Adams was also provided a pension of ten percent of pay and lived in a house owned at the time by the Smithsonian. Secretary Michael Heyman declined a housing allowance. He did receive a modest pension benefit equal to 2.5 percent of his salary for each year of service.

By the end of the 1990's, as Secretary Heyman was preparing for retirement, the former Executive Committee determined that a salary of approximately \$300,000 would probably be required to attract a well-qualified successor.<sup>21</sup> Mr. Heyman's salary was raised to \$300,000 in

<sup>21</sup> See April 6, 1999 memorandum from Jim Hobbins to the Executive Committee of the Board of Regents, attached as Exhibit 4.

1999, and Mr. Small's salary was purportedly set at \$330,000, a ten percent increase over Mr. Heyman's 1999 salary, when he assumed office in early 2000.

**A. How Secretary Small's Initial Compensation Package was Established**

A very small group of Regents, supported by the Executive Assistant to the Secretary, James Hobbins<sup>22</sup>, were involved in recruiting and hiring Mr. Small as Secretary. It is not clear, however, how certain elements of compensation ended up being included in Mr. Small's total compensation. What is clear is that these Regents, none of whom is currently on the Board, used the different compensation benefits provided to prior Secretaries as a guide, with base pay, pension and housing being the starting points in formulating the total package. Each part of Mr. Small's compensation, however, was increased above what each prior Secretary had received, and Mr. Small was allowed to "double-up" on certain benefits provided to prior Secretaries. Although Secretary Adams received all three elements (base pay, pension and housing), his base salary, when adjusted in constant dollars, was significantly lower (\$180,000) than his successors. Secretary Heyman did not need or want Smithsonian-provided housing, so he received only base pay and a pension, with his base pay being adjusted very slightly upward.

When hired, Mr. Small's total compensation, included, in addition to a competitive base salary which was set at ten percent above the final salary of Secretary Heyman, a payment "in lieu of pension" equal to seventeen percent of his annual base pay.<sup>23</sup> Mr. Small was also granted a "housing allowance" of up to \$150,000 per year.<sup>24</sup> Mr. Small's insistence on a large payment in lieu of pension is noteworthy because he was, at the time, already receiving pensions from

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<sup>22</sup> Mr. Hobbins has been at the Smithsonian for more than forty years and in that position since 1980.

<sup>23</sup> Exhibit 5.

<sup>24</sup> *Id.*

both Fannie Mae and Citicorp.<sup>25</sup> Counting the “in lieu of pension” payment and the housing allowance, Mr. Small’s total cash compensation for his first year – 2000 – came to \$536,100, over sixty percent higher than both the \$330,000 figure that was publicly disclosed and Mr. Heyman’s compensation in the previous year. Mr. Small’s employment agreement also stipulated that he “fly” first class, and that his spouse’s travel expenses be paid when “her presence is appropriate.”<sup>26</sup> Neither of these benefits had been accorded to the prior Secretaries.

If Mr. Small had not received a housing allowance and had received only a modest pension benefit, his initial compensation package would have been reasonable. But there was a clear intent of the small group involved with hiring Mr. Small to increase his compensation substantially and “package” it in a way that would mask the substantial increase in compensation as compared with Mr. Small’s predecessor.

The Committee was told by individuals directly involved in negotiating Mr. Small’s initial compensation that there was concern, among the limited number of former Regents involved in setting Mr. Small’s compensation, that there would be adverse publicity if the Smithsonian announced that Mr. Small was being hired at a salary in excess of \$500,000 a year. Rather than characterizing Mr. Small’s annual salary as \$536,100, which was his true cash compensation, the then-Executive Committee announced Small’s salary at \$330,000 (a ten percent increase over Heyman’s total cash compensation) and then paid him additional cash compensation of \$206,100 in payments for housing and in lieu of pension. When discussed with

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<sup>25</sup> According to Fannie Mae’s May 18, 2000 proxy statement, Mr. Small’s estimated annual retirement benefits for his nine years of service was \$581,836 per year, assuming full vesting at normal retirement age. It appears from the proxy that Mr. Small was 90 percent vested in his pension, which would result in an annual benefit of more than \$500,000 for life. Based on Citicorp’s federal securities filings, Mr. Small’s Citicorp pension is approximately \$400,000 per year.

<sup>26</sup> Employment Agreement ¶ 8, attached as Exhibit 5.

the press, the \$330,000 base salary was generally presented as Mr. Small's compensation, and the press generally reflected this figure.<sup>27</sup>

In his second year (2001), Mr. Small's base salary jumped about forty-six percent, from \$330,000 to \$480,000, an increase for which there is little documentation other than a memo from Mr. Hobbins approving the increase and a short summary of the Executive Committee's actions, also prepared by Mr. Hobbins.<sup>28</sup> The large increase in base salary had the ripple effect of increasing Mr. Small's payment in lieu of pension from \$56,100 to \$81,600. Beginning in 2002, Mr. Small's housing allowance was also linked to his base salary and increased each year. Together with his pension payment and housing allowance, Mr. Small's compensation for his second year – 2001 – was now \$711,600, nearly two times greater than the total compensation Mr. Heyman received in the same position only two years prior.<sup>29</sup> This \$150,000 increase in base salary was approved by the then-Executive Committee without informing the full Board and without decreasing the \$150,000 housing allowance, which was, in effect, simply additional cash compensation.

The Committee learned that Mr. Small requested that the Executive Committee increase his base salary by \$150,000 in 2001. One Regent involved in the discussions explained that Mr. Small indicated such an increase was necessary because his salary was “compressing” the

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<sup>27</sup> “Small will be taking quite a salary cut. He made \$4.2 million plus housing in 1998 [from Fannie Mae]. The Smithsonian salary is \$333,000 [sic]. ‘I have been extremely fortunate,’ he says. ‘I am perfectly fine with reducing my salary.’” Jacqueline Trescott, Player: Lawrence Small Knows Finances, But That’s Not The Richest Part of the Experience He Brings to the Smithsonian, WASH. POST, Jan. 25, 2000, at C1.

<sup>28</sup> Exhibit 6.

<sup>29</sup> The large increase in Mr. Small's compensation had an additional cost for the Smithsonian. Former Secretary Ripley had been promised an annuity equal to 80 percent of the current Secretary's base pay, plus another 20 percent of the current Secretary's base pay as an annual payment for “research support.” Thus, Mr. Ripley was being paid at a \$480,000 annual annuity rate in 2001 when his highest salary as Smithsonian Secretary was \$100,000. The Smithsonian's Chief Financial Officer and the Regents appear to have been unaware of this.

salaries of museum heads and senior executives of the Smithsonian below market. The IRC was told that Mr. Small claimed that his request for a salary increase of almost fifty percent was “not about the money” for himself, but rather was a way to revamp the salary structure for the entire institution, thus enabling the Smithsonian to recruit and retain the best and the brightest.

This increase, as discussed in contemporaneous documents, was also to recognize the performance of Mr. Small and to bring the Secretary’s compensation in line with what the Executive Committee deemed to be the prevailing market rate of the 75<sup>th</sup> percentile for comparable positions.<sup>30</sup> The increase in Mr. Small’s compensation was also justified as a reward for his ostensibly raising \$200 million in his first year as Secretary.<sup>31</sup> It was originally considered that Mr. Small’s salary would be increased by only \$50,000, with the remaining \$100,000 to be paid as a one-time bonus.<sup>32</sup> Mr. Small indicated that he would give the \$100,000 back to the Smithsonian in the form of a leadership donation. This approach was ultimately scrapped, and Mr. Small’s base salary was instead increased by \$150,000.<sup>33</sup>

In reaching this decision, the Executive Committee, none of whom is currently on the Board, relied on a compensation study presented by Towers Perrin (discussed further below) that concluded that the market rate comparison at the 75<sup>th</sup> percentile for presidents of research universities and executives at select nonprofit organizations was \$670,835 (excluding housing).

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<sup>30</sup> Exhibit 7.

<sup>31</sup> *Id.*

<sup>32</sup> Exhibit 8.

<sup>33</sup> Mr. Small made cash donations to the Smithsonian totaling \$2,938 and donations of stock totaling \$426,356 over the course of his tenure as Secretary.

**Table 1**  
**Mr. Small's Compensation, 2000-2007**

<b>Year</b>	<b>Base Salary</b>	<b>Housing Allowance</b>	<b>Payment in Lieu of Pension</b>	<b>Total Compensation</b>
2000	\$ 330,000	\$ 150,000	\$ 56,100	\$ 536,100
2001	\$ 480,000	\$ 150,000	\$ 81,600	\$ 711,600
2002	\$ 502,896	\$ 157,155	\$ 85,492	\$ 745,543
2003	\$ 518,486	\$ 162,027	\$ 88,142	\$ 768,655
2004	\$ 541,351	\$ 140,977	\$ 92,030	\$ 774,358
2005	\$ 573,832	\$ 179,322	\$ 97,551	\$ 850,705
2006	\$ 596,785	\$ 186,495	\$ 101,454	\$ 884,734
2007	\$ 617,672	\$ 193,022	\$ 105,004	\$ 915,698

Neither Mr. Small nor the then-Executive Committee considered recharacterizing as base salary Mr. Small's \$150,000 housing allowance, which would have allowed the salary scale of other Smithsonian employees to move upward, without raising Mr. Small's salary. As for the rationale that the 2001 increase in base compensation would allow the Smithsonian to raise the compensation of other Smithsonian employees, the IRC notes that the Executive Committee, at the time it increased Mr. Small's salary, accepted Mr. Small's recommendations to make the following adjustments in compensation for the top 31 Smithsonian employees: 16 received no salary increase, 1 received an increase of 21 percent and the remaining 14 received an average increase of 9.8 percent.<sup>34</sup> These salary adjustments could have been made under the salary structure in existence before 2001 and certainly without any adjustment to Mr. Small's salary. As these numbers show, though Mr. Small's base salary was increased by more than 40 percent, he did not decompress senior executive salaries.

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<sup>34</sup> Exhibit 7.

Driving this high level of compensation was Mr. Small's own expectations. First, Mr. Small requested the \$150,000 raise in 2001 using an argument that should have been questioned by the Executive Committee. Second, the Committee was told in its interviews that Mr. Small had very high expectations for his compensation and benefits even before he was hired. Among other things, when he was negotiating his employment contract, he made clear that his contract must provide him with the right to "fly" first class. In fact, the IRC was told that Mr. Small stated that first-class travel was a "deal breaker."

Mr. Small appears to have aggressively guarded each and every element of what he viewed as his rightful compensation package. For example, after the Regents learned earlier this year the true nature of Mr. Small's housing allowance and the details of his total compensation package, there was an attempt to clarify certain terms of his employment agreement. Mr. Hobbins, assisted by Mr. John Huerta, the Smithsonian's General Counsel, drafted clarifying amendments to Mr. Small's employment agreement. These provided: (1) increases to Mr. Small's housing allowance at the discretion of the Regents (rather than being linked to the Secretary's salary as had become the custom, though not required by his 1999 employment agreement), (2) clarification that first-class travel includes the use of car services and premium hotel accommodations (rather than simply allowing Mr. Small to "fly first class"), and (3) limitations on the Smithsonian's payment of Mrs. Small's travel to "bona fide and official business of the Institution" (rather than paying for Mrs. Small's travel "where her presence is appropriate"). Mr. Small's response to these proposed changes was as follows:

I'm not willing to discuss giving up one iota of what the Institution agreed to provide me before I came to work . . . . It would represent



the highest form of naiveté to think . . . I would entertain some form of “give-up.”<sup>35</sup>

Mr. Small further demanded that the Smithsonian pay for legal counsel should he find counsel necessary. Mr. Small suggested that, if his first-class travel were limited in any way, the Smithsonian could increase his housing allowance by the value of the estimated first-class travel expenses that he and his wife might incur for Smithsonian business each year. Most disturbing from a governance perspective, Mr. Small instructed Messrs. Hobbins and Huerta to keep these issues from Mr. Sant, the Chair of the Executive Committee.

I do not want any of my comments passed along to Roger [Sant]. This is strictly a discussion that you [Mr. Huerta], Jim [Hobbins] and I are having. We shouldn't go to Roger [Sant] until we are completely comfortable that any proposed amendment is good for the Institution, good for me, is economically equivalent to the existing arrangement and operative practices and protect everyone from adverse consequences.<sup>36</sup>

His closing remark to Mr. Huerta is perhaps the most telling about Mr. Small's attitude regarding his own compensation and the oversight authority of the Board: “These problems should be settled before we go back to the Board. It's not right to toss any perceived problems in their lap.”<sup>37</sup>

These remarks are typical of an attitude that was confirmed in the IRC interviews and other information. Evidence collected by the Committee indicated Mr. Small considered himself to be in charge of his own compensation. The Board was not to consider the terms of his employment, and Mr. Small expected the Smithsonian staff to help him manage the approval process with the Board to achieve this.

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<sup>35</sup> Exhibit 9.

<sup>36</sup> Exhibit 10.

<sup>37</sup> *See id.*

Another factor that led Mr. Small's compensation to grow so significantly was that only a few people were involved in negotiating his initial contract and, until quite recently, in fully discussing and understanding the full scope of his total compensation package. The full Board of Regents was apparently not aware of the details of Mr. Small's employment arrangements until 2007 because, prior to 2004, his compensation increases were approved by the Executive Committee only, not the full Board. In the early years of Secretary Small's tenure, the members of the Executive Committee appeared willing to acquiesce to Mr. Small's demands without questioning the justification or appropriateness for providing such benefits.

Mr. Small's employment agreement was largely negotiated without the assistance of either internal Smithsonian legal counsel or external counsel. Rather than engage outside counsel to represent the Smithsonian in its negotiations with Mr. Small, the record shows the agreement was drafted by Mr. Hobbins (who is not a lawyer), and provided to the General Counsel and other lawyers in the General Counsel's office before it was finalized, but after the terms had been worked out with Mr. Small. This put the Smithsonian legal department in the position of negotiating against its eventual boss. The General Counsel and one of his staff members offered very minor suggestions, all of which were incorporated into the final agreement. Even considering the agreement in light of comparable agreements in 1999, the agreement is inadequate at best, with key terms and provisions both vague and internally contradictory.

Despite the awkward position in which the General Counsel found himself, the IRC believes he should have more vigorously represented the interest of the Smithsonian in this situation. Had the Board engaged outside legal counsel, the IRC believes the issues relating to housing and travel would more likely have been addressed appropriately.

**B. The Housing Allowance**

Unlike his predecessor, Secretary Small was provided with an allowance for housing. In particular, Secretary Small's Employment Agreement provide as follows:

The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance not to exceed \$150,000 per year in compensation for up to fifty percent (50%) of the actual costs of his housing. Payment of these funds will be made by the Smithsonian to the Secretary monthly upon his presentation monthly of records of housing, operating and maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures.

Despite this language, which contemplates a reimbursement of Mr. Small's actual costs incurred as compensation for use of his house for Smithsonian entertainment, the Committee was told that it was understood by all those involved in the negotiation of Secretary Small's agreement that because Mr. Small owned his home outright, the housing allowance was a means to increase compensation to the Secretary.

The payment to Mr. Small of this housing allowance of \$150,000 – which was increased beginning in 2002, and which reached \$193,000 in 2007 – highlights not only the flaws in the Smithsonian's compensation system, but also Mr. Small's control over the Smithsonian and the Board on this issue and the failure of the Regents to understand and limit Mr. Small's compensation.

The employment agreement provides that, in return for making "his personal residence available for official Smithsonian hospitality," Mr. Small was to receive a housing allowance of up to 50 percent "of the actual costs of his housing." (Emphasis added.) Before Mr. Small could receive such payment, he was required, according to the terms of this agreement, to present each

month “records of housing operating and maintenance expenditures including but not limited to: homeowner’s insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures.” In an email dated January 11, 2000, Mr. Hobbins confirmed to Yong Lee, Mr. Small’s personal assistant, that Mr. Small would “be reimbursed” for his housing “upon the Secretary’s presentation in writing of accounts and receipts.”<sup>38</sup> Based on Mr. Small’s employment agreement, therefore, in return for use of his house for Smithsonian entertaining, the Smithsonian initially understood that Mr. Small was to be reimbursed for actual housing expenses, upon presentation of receipts.

Within a month of assuming the position of Secretary, however, Mr. Small “establish[ed] the procedure” for the “monthly payment of the housing allowances.”<sup>39</sup> This procedure, which appears to have been created by Mr. Small, did not require Mr. Small to present any receipts, nor provide any evidence of use of his house for Smithsonian entertaining. Rather, Mr. Small, who owned outright not only his house, but also a personal gallery of artifacts located in an apartment near his home, calculated a “virtual mortgage” payment on both the house and gallery. He used a hypothetical mortgage rate of 8.5 percent<sup>40</sup> on an assumed principal amount of \$4 million. The cost of this virtual mortgage would be \$340,000 per year, 50 percent of which is \$170,000, \$20,000 more than the cap on his housing allowance. In a February 10, 2000 letter to Messrs. Hobbins and former Congressman Barber Conable, then a citizen Regent, Mr. Small concludes

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<sup>38</sup> Exhibit 11.

<sup>39</sup> Exhibit 12.

<sup>40</sup> While an 8.5 percent mortgage rate was consistent with the market in February 2000, this hypothetical rate remained constant despite the large drop in mortgage interest rates after 2000.

that “[s]ince the 50% share of my calculated cost of ownership exceeds the Smithsonian’s housing allowance, I would ask for the maximum \$150,000 per year, or \$12,500 per month.”

It went without saying that Mr. Small expected these payments without “presentation monthly of records of housing operating and maintenance expenditures” as required by his employment agreement. The payment procedure established by Mr. Small failed to take into account the requirement in his employment agreement that he be reimbursed only for “actual costs of his housing.” (emphasis added.) Yet, these payment procedures, apparently, were accepted by the Smithsonian without question, despite the fact that Mr. Small’s interpretation that he was to be paid for a “virtual mortgage” is not supported by his written employment agreement and contradicts the interpretation set forth by Mr. Hobbins in his January 2000 email to Mr. Small’s assistant. Thus, Mr. Small very quickly turned the reimbursement payments for use of his house described in his employment agreement into additional salary. This additional salary went up each year.

There was no need for a housing allowance in the first place. Unlike previous Secretaries who received a housing allowance, Mr. Small already resided in Washington when he assumed the Secretary position. He had no extraordinary expenses associated with moving to a location where housing costs are far higher than the national average in order to accept the position of Secretary. His annual retirement benefits from Citicorp and Fannie Mae totaled nearly a million dollars.

The fact that the housing allowance was actually additional salary is also made manifest by the fact that Mr. Small rarely used his house for entertaining Smithsonian donors or potential donors. As Mr. Small himself explained in an email to *The Washington Post*, “[g]iven the exciting new museums and modernized exhibits which opened over the last several years, it

became overwhelmingly clear it was far more compelling and cost-effective to entertain donors and potential supporters in the Smithsonian's unique settings than in a private home."<sup>41</sup> In his seven years as Secretary, Mr. Small held 23 Smithsonian events at his house or gallery, five of which were "staff development" events for a very small number of Small's senior staff. In total, Mr. Small entertained 47 donors and potential donors at the 18 fund-raising events held at his house from 2000-2007, most of which occurred in the early years of his tenure. Over this same period, Mr. Small received, based on documents provided to the Committee by the Smithsonian, \$1,198,715 in housing allowance from the Smithsonian. Calculated as a per person venue fee for fund-raising, this works out to be over \$25,000 per potential donor or almost \$70,000 per fund-raising event. The characterization of the \$150,000 cash payment (growing to over \$190,000 at the time of Mr. Small's resignation) as a housing allowance, rather than additional base salary, appears to the Committee to be part of an overall compensation package that was fundamentally deceptive from the beginning and which has created many of the compensation-related problems that, in recent months, have confronted the current members of the Board — most of whom never knew the details of Mr. Small's compensation or saw his contract.

### **C. The Use of Compensation Consultants**

In 2000, Secretary Small directed the management of the Smithsonian to hire independent compensation consultants to evaluate management compensation at the Institution. After he was hired, but before he started work at the Smithsonian, Mr. Small made clear that the Smithsonian needed to develop a systematic approach to benchmarking executive compensation with a defined group of comparable nonprofit organizations. Mr. Small brought a "for-profit"

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<sup>41</sup> James V. Grimaldi and Jacqueline Trescott, Small's House Rarely Used For Business, WASH. POST, Apr. 19, 2007, at C1.

mind set to the Smithsonian's compensation practices, suggesting that the executive compensation specialists at Fannie Mae, Small's then-employer, could be of assistance.<sup>42</sup> His stated purpose was to provide the Regents with comparable information on management pay in what he considered to be peer institutions, a review process that continued throughout his tenure.

While formalizing this process and providing the Regents with comprehensive information on management compensation was a good idea, it appears that the process actually put in place was not objective and became used primarily as a method of justifying substantial compensation increases for Secretary Small and his management team. The process was not used by the Regents for a thorough discussion of compensation strategy or what would constitute reasonable compensation for these individuals.

The first study done by the outside consulting firm of Towers Perrin, presented in September 2000, appears to have been primarily intended to justify the substantial 2001 increase in Secretary Small's compensation. Both this first Towers Perrin study and the subsequent study carried out in 2002 raise a number of issues:

- Towers Perrin was hired by Smithsonian management, and not the Regents or the Compensation Committee. This gave management undue control over the outcome of the study.
- As stated clearly in the compensation reports, management provided the comparable organizations, a decision that significantly influenced the results of the study. The group of comparables was comprised of major research universities and large nonprofit organizations. Different groups of universities and nonprofits

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<sup>42</sup> Exhibit 13.

would have produced different results, with lower market rates for the positions surveyed, including the Secretary.

For example, the Towers Perrin 2002 report on the Secretary's compensation showed median cash compensation for comparable positions to be \$515,000 in large nonprofits, \$530,000 in select universities, and \$350,000 in public universities, which, like the Smithsonian, receive substantial public funding and therefore are more appropriate comparisons. At the time, the Secretary's base pay was \$480,000 just below the median of the first two groups, but forty-four percent above the median for public university presidents. Mr. Small's actual cash compensation, including his housing allowance and payments in lieu of pension, was well above the median of all comparable groups.

- Documents received from the Smithsonian show that, in the early years of Secretary Small's tenure, the Smithsonian management (and the consultants they employed) were targeting compensation for the Secretary at the 75<sup>th</sup> percentile, rather than the median or average compensation for comparable positions.
- The findings in the Towers Perrin report used the following as "comparable" nonprofit institutions: the Ford Foundation, the J. Paul Getty Trust, the National Geographic Society, the Metropolitan Museum of Art, the American Museum of Natural History, The Carnegie Corporation of New York and the Kennedy Center for the Performing Arts. The Committee was told that the comparison group was hand-picked by Smithsonian management. The average compensation for this group (salary, bonuses, fees, and severance payments) was reported as \$487,200 in 2000 and the 75<sup>th</sup> percentile was \$544,900. None of these



organizations, however, receives the substantial majority of its budget from government sources, and so needs to be as sensitive to government budgetary concerns and salary needs as does the Smithsonian.

- Both Towers Perrin reports (and the later Watson Wyatt reports) compared base compensation for Secretary Small to the cash compensation received by Presidents or Executive Directors in the survey sample, without including the substantial value of his housing allowance and payments in lieu of pension. It is true that college and university presidents often receive free housing, but this housing usually requires the president to live on campus, to be available around the clock and to use the house for frequent entertaining. This was not the case with the housing allowance accorded Mr. Small, who used his home infrequently for entertaining.
- By not treating the housing allowance as additional cash compensation, Mr. Small's total compensation was significantly understated.

The Towers Perrin firm was replaced by Watson Wyatt (hired through a competitive bidding process) in 2004 and 2006.<sup>43</sup> The Watson Wyatt relationship was similar to the Towers Perrin relationship. Watson Wyatt was hired by Smithsonian management (the Human Resources Department), not the Regents or their Compensation Committee. The peer group was defined by management, with no input from the Regents or from the Watson Wyatt consultants.

In line with typical governance practices, the Watson Wyatt consultants encouraged Smithsonian management to provide them direct access to the Regents, but were denied this

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<sup>43</sup> IRC member Pete Smith was employed by Watson Wyatt from 1968 to 1999. During his tenure at Watson Wyatt, the Smithsonian was not a client of the firm. Mr. Smith has had no formal relationship with Watson Wyatt since July of 1999.

access and during their involvement had only one brief meeting with the Smithsonian's Compensation Committee. This meeting typified the strong influence that management exercised over Regents' discussions:

- Smithsonian management including Mr. Small and Chief Operating Officer Sheila Burke were present throughout the meeting.
- The questions asked by the Committee members were good ones: Was the data aged appropriately? What was the source of the data, and was the comparison group reasonable? Did their approach and methodology correspond to accepted industry standards?
- The consultant's response to each of these questions, appropriately, was yes. But there were deeper questions that needed to be asked: Was the Secretary's compensation reasonable? Why was the housing allowance excluded from the comparisons? Why was this peer group used, and would the result have been materially different if a different peer group was used?

The consultants should have urged the Committee to meet in executive session to discuss these questions, but undoubtedly it was difficult to do so given their limited assignment (basically to "crunch the numbers," as they put it) and given the fact that both Mr. Small and Ms. Burke were in attendance.

In the IRC's view, this situation is a clear demonstration of how governance at the Smithsonian appeared to be improving, while the decision making process remained overly controlled by the Secretary and his staff. The Regents believed they were doing the right thing,

but they were not being served as effectively as they could have been by the consultants and they were being misled by management.

When Watson Wyatt was retained, the target for the Secretary's compensation was dropped from the 75<sup>th</sup> percentile to the 50<sup>th</sup> percentile of the comparison group. This drop, however, did not result in a reduction in Mr. Small's salary because the median compensation ranges shifted significantly upward. The Smithsonian achieved this by changing its group of comparable nonprofits. While public universities represented twenty percent of the original group of comparables, this percentage was dropped to eight percent in the later study. As presidents of public universities were generally the lowest compensated executives in the Smithsonian's comparison groups, this reduction had the effect of increasing the study's median compensation significantly.

The Smithsonian's compensation strategy under Mr. Small is also troubling. In the early years of his tenure, the documentation the IRC received states that the strategy for the Secretary was to pay him at about the 75<sup>th</sup> percentile of the survey comparisons, while the strategy for other key executives was to pay them at the 50<sup>th</sup> percentile, raising questions of equity.

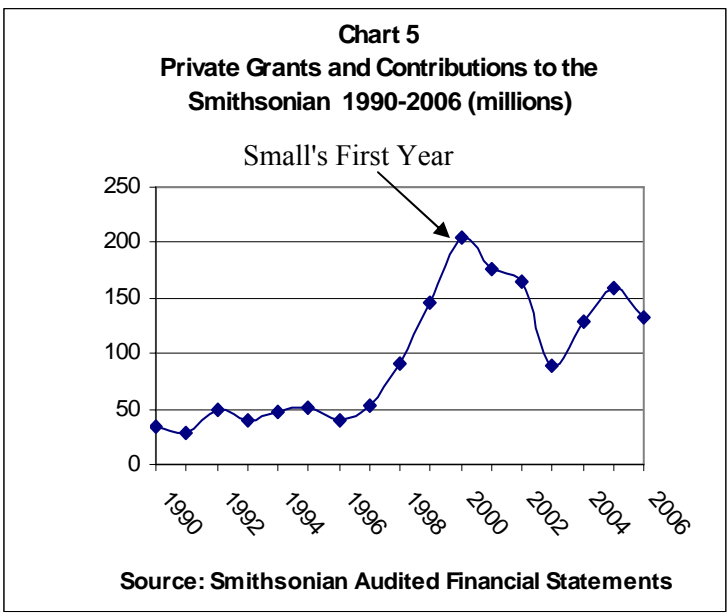
There are other issues of internal fairness. Comparisons for scientists and museum directors and others directly carrying out the mission of the Smithsonian show that their salaries, on average, are generally below the survey targets, while senior executives in the "Castle" – Mr. Small and the other senior executives – were generally above the survey averages. Put simply, this is bad compensation policy – it demoralizes regular employees when their leader is paid at the 75<sup>th</sup> percentile of market while everyone else is paid at the mid-market range.

To be fair to the Regents currently serving the Smithsonian, recent increases in Secretary Small's base compensation since 2002 have been reasonable, generally at the level of

comparable percentage increases in base salaries in any sector, and often at or below the percentage increase being given to federal employees. A Regent who joined the Board in 2002 and who approved a modest increase in the Secretary's base salary may have believed that there was no reason to worry about unreasonable compensation. By 2002, the Secretary's total compensation was already well above the 75<sup>th</sup> percentile, and this should have been brought to the Regents' attention or uncovered by them long before Senator Grassley and the media raised this issue.

**D. Performance of Mr. Small**

The Committee heard from many individuals involved with the Smithsonian that Mr. Small, whatever his short-comings, was a prodigious fund-raiser for the Smithsonian. For example, the Committee heard on numerous occasions the statistic that Mr. Small had raised more than a \$1 billion, which was an amount that exceeded all the funds raised previously in the history of the Smithsonian. The Committee does not believe that success in fundraising has any bearing on its analysis of the governance issues discussed in this report, as fund-raising success should not excuse failures to satisfy fiduciary duties.



That said, to the extent that fund-raising is a metric to be used by the Board in assessing and rewarding the performance of the Secretary, the Committee deemed it appropriate to consider

Mr. Small's fund-raising record at the Smithsonian. This section provides a historical perspective on private fundraising at the Smithsonian, and shows that annual private fundraising actually declined during Mr. Small's tenure.

Prior to the late 1990s, the Smithsonian had raised very little in the way of private donations, and had no real institutional capacity for fundraising. In fact, prior to 1994, the year in which Mr. Heyman became Secretary, the Smithsonian appears to have raised less than \$350 million in its entire history. As Chart 5 shows, the average amount raised annually for the years 1990 through 1997 was less than \$50 million.

After taking over as Secretary in 1994, Mr. Heyman increased the effectiveness of the central fund-raising capacity that had been sorely lacking at the Smithsonian. Prior to Mr. Heyman's tenure, fundraising was mostly decentralized, with individual museums bearing the burden of raising funds for themselves.

The steep increase shown in Chart 5 that begins in the 1997-98 period demonstrates fundraising success from Mr. Heyman's efforts. From 1997 to 1999, he tripled the amounts raised from private sources. During his six-year tenure, he raised more than \$400 million in private grants and contributions. Mr. Heyman could thus claim, as Mr. Small did, that he had raised more money for the Smithsonian during his tenure than had been raised in the history of the Smithsonian theretofore.

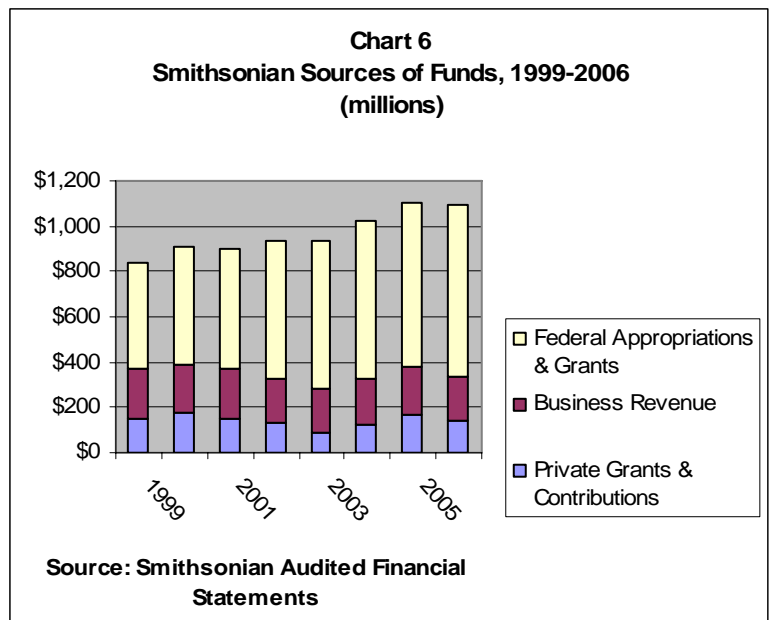
Mr. Heyman's most notable success was the Steven Udvar-Hazy gift for the Air & Space Museum at Dulles Airport. Although the Udvar-Hazy pledge was fulfilled during Mr. Small's tenure, the gift from Mr. Udvar-Hazy was raised during Mr. Heyman's tenure.

Mr. Heyman also laid the groundwork for several other large gifts that would come into the Smithsonian during Mr. Small's tenure. For example, Mr. Heyman developed a relationship

with Kenneth Behring, a California philanthropist, which ultimately resulted in gifts of \$20 million in 1998 and \$80 million in 2000. During Mr. Heyman’s tenure, the Smithsonian developed a relationship with the Lemelson Foundation that resulted in gifts of \$54 million in 1994, \$5 million in 1998, \$5 million in 2000 and \$14.6 million in 2001.

When Mr. Small became Secretary in 2000, he inherited from Mr. Heyman a functioning centralized fund-raising capacity and pipeline that had already been developed. As Chart 5 shows, 2000 was the high point of fund-raising success for the Smithsonian. This spike in private donations largely reflects the \$80 million gift from Mr. Behring for the National Museum of Natural History. In 2001, the Smithsonian received a gift of \$30 million from the Donald W. Reynolds Foundation to purchase the Lansdowne Portrait of George Washington as a result of the public plea on the “Today” show from Marc Pachter, Director of the National Portrait Gallery for financial help. The Donald W. Reynolds Foundation contributed an additional \$45 million in 2005 for the renovation of the National Portrait Gallery.

Even including these large gifts, the amount of private funds contributed to the Smithsonian began to decline after 2000,



reaching a low of \$88 million in 2003, even though smaller contributions remained constant or increased slightly.<sup>44</sup> Private funds raised in 2006 improved to \$132 million, though that figure is still about ten percent lower than the amount raised in 1999 during Mr. Heyman's last year as Secretary. Notwithstanding this decline, Smithsonian data show that gifts under \$5 million have been rising over the same time period.<sup>45</sup> This overall decline in annual fundraising at the Smithsonian over this period stands in contrast to the fundraising record of comparable institutions that saw their fundraising improve over the same period.<sup>46</sup>

As private contributions have receded in recent years, the Smithsonian has come to rely more heavily on the Federal government for its funds. In 1999 federal appropriations and grants constituted approximately fifty-four percent of the Smithsonian's revenue. By 2006, this proportion of federal funds had increased to about two-thirds. As Chart 6 shows, federal funding increased from \$470 million in 1999 to about \$760 million in 2006, an increase of about sixty-one percent. The Smithsonian informed the IRC that the increase in federal appropriations reflects, in significant part, the opening of two new museums and increased spending for anti-terrorism measures following 9/11, and noted that the Smithsonian's federal staff has decreased by about five percent since 2000.<sup>47</sup>

In contrast, over the same period the Smithsonian's business revenue dropped by ten percent from \$217 million to \$194 million and private grants and contributions dropped by nine percent from \$151 million to \$137 million. If these two sources of funds for the Smithsonian

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<sup>44</sup> Exhibit 14.

<sup>45</sup> *Id.*

<sup>46</sup> Exhibit 15.

<sup>47</sup> A summary of the Smithsonian's sources of funds provided to the IRC by the Smithsonian is attached as Exhibit 16.

continue to decline, the Smithsonian will necessarily come to rely even more on federal funds for more of its operations.



## EXPENSES OF THE SECRETARY

### **A. Mr. Small's Expenses**

Mr. Small made perfectly clear in 1999 to the Regents working out the terms of his employment agreement that it was absolutely necessary that he travel first class. There appears to have been no consideration by Mr. Small that the Smithsonian was a nonprofit organization, funded primarily with taxpayer dollars, and no apparent sensitivity to the public perception of what many Smithsonian employees and visitors might consider lavish travel expenses.

Mr. Small also seemed unwilling to consider using his own funds or frequent flyer miles to upgrade to first class when available, as his predecessor often did and as many in the nonprofit world did in 1999 and do today. The Regents involved in contract discussions with Mr. Small appear to have acquiesced to Mr. Small's demands without questioning the appropriateness or potential adverse publicity of such an arrangement.

These issues were compounded by the failure of the Smithsonian to enforce the contract terms as drafted. Mr. Small's employment agreement states that he is "authorized to fly first class."<sup>48</sup> (emphasis added). This was interpreted by Mr. Small to mean first class accommodations, as well as other travel amenities, despite Smithsonian policies to the contrary. While there is no support within the written agreement for Mr. Small's interpretation, no one – not the Regents, the Compensation Committee, the Audit and Review Committee, the Chief Financial Officer, the General Counsel, nor the outside auditors – questioned Mr. Small's expansion of his contract rights.

One clear example of Mr. Small's excessive travel expenses and his disregard for Smithsonian policy was his chartering a private jet, at a cost of \$14,000, to fly to San Antonio,

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<sup>48</sup> Employment Agreement ¶ 8, attached as Exhibit 5.

Texas to receive a “Golden Plate Award” from the American Academy of Achievement<sup>49</sup> on Saturday, May 5, 2001 and return to Washington the next day to attend a Board of Regents’ committee meeting on Sunday and a Board meeting on Monday. Mr. Small's stated rationale for using a charter jet, rather than flying commercial, available at a fraction of the cost, was his need to attend the Board committee meeting scheduled for Sunday afternoon. Even though a commercial flight was available that would have allowed Mr. Small to return to Washington late Sunday morning, with two hours to spare before the committee meeting and 20 hours before the Board meeting, he rejected this option, the IRC learned, because he feared any delay, either in San Antonio or in making a connecting flight, would make him miss or be late for the committee meeting.<sup>50</sup>

When *The Washington Post* reported on the extravagance of this chartered flight, it noted, on the basis of statements from Smithsonian personnel, that Mr. Small had paid for the jet himself out of a separate fund he had personally funded at the Smithsonian. There was, however, no such fund, and the flight was paid for from several Smithsonian funds. Moreover, Smithsonian management had directed accounting staff to alter its accounting records.<sup>51</sup>

The IRC analyzed the recent investigation of such expenses by the Smithsonian’s Inspector General.<sup>52</sup> In the summer of 2006, the Smithsonian chose Cotton & Co. for a review of

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<sup>49</sup> The American Academy of Achievement is an organization headed by Northern Virginia businesswoman Catherine Reynolds and her husband Wayne which, according to press accounts, was established to honor "superachievers." A few days after Mr. Small received the award, Mrs. Reynolds announced a \$38 million gift from the charitable foundation that bears her name to the Smithsonian to create a hall of achievement for prominent Americans. The gift was later withdrawn after strong objections from Smithsonian curators and others.

<sup>50</sup> Exhibit 17.

<sup>51</sup> Exhibit 18.

<sup>52</sup> The current Inspector General was provided a draft of the Report and an opportunity to comment. She provided written comments to the Committee, which are attached as Exhibit 19. The Committee gave due

the following: (1) whether the expenses of Small and Gary Beer, the Chief Executive Officer of Smithsonian Business Ventures had been properly accounted for and (2) whether the expenses of the Secretary and the Chief Executive Officer of SBV have been reasonable in the context of the purpose of the expense and the mission of the Smithsonian and SBV, respectively.

The statement of work called for Cotton & Co. to opine as to the reasonableness of expenses.<sup>53</sup> Cotton & Co. and the Inspector General,<sup>54</sup> however, later agreed that Cotton & Co.'s work instead would be limited to a review of whether expenses and compensation of the Secretary and Chief Executive Officer of SBV conformed to Smithsonian's agreed-upon procedures ("**AUP**"). In contrast to an audit, an AUP engagement does not determine whether expenses are properly incurred and recorded in an absolute sense, but rather whether the expenses were incurred and recorded in accordance with an organization's policies.

This limiting of Cotton & Co.'s engagement had two undesirable effects. First, it meant that the Smithsonian would not obtain a professional opinion as to whether the expenses and compensation of the Secretary were reasonable. Second, by using an AUP, it afforded the Smithsonian an opportunity to influence the results in a manner that would have been precluded had the original request been honored.

If the clear meaning of "fly first class" were applied to Mr. Small's travel expenditures, his expenses for accommodations, food, car services and other items would have been limited to the Federal Travel Regulation limits.

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consideration to these comments, but disagreed with them, and determined that no changes to the Report were warranted.

<sup>53</sup> Exhibit 20.

<sup>54</sup> Initially, the Smithsonian CFO intended to oversee the work of Cotton & Co. It was later agreed that such oversight role was best handled by the Inspector General.

A November 30, 2006 draft of the Cotton & Co. report shows that expenditures of \$43,310 in Mr. Small's mixed travel and other expenses (travel costs, furniture for the Secretary's office, catering, florists and other costs) were unsupported or had inadequate support.<sup>55</sup> In addition, Cotton & Co. identified \$54,911.97 in travel costs (primarily car services, the charter flight from San Antonio and some hotel costs) that it deemed unallowable under its understanding of Smithsonian policies, plus another \$68,665.40 in "other" unallowable expenses (more catering, a portion of expenses incurred by Mrs. Small on a trip to Cambodia with Smithsonian donors, florist charges, and Citibank credit card charges for which the Cotton & Co. report provides no description).<sup>56</sup> The total charges in the November 30, 2006 draft of the Cotton & Co. report that were either unallowable, were not supported or were inadequately supported came to \$210,197.89.

Cotton & Co. and the Acting Inspector General provided the November 30, 2006 draft report to the Secretary for comment and response. Under normal procedures, the Secretary would have been limited to calling any factual inaccuracies to the Acting Inspector General's attention and commenting on the report. The Acting Inspector General and Cotton & Co. would have determined if changes should have been made to the report and then they would have issued it.

Instead there were significant back-and-forth discussions among the Acting Inspector General, Cotton & Co. and the Secretary's office regarding his expenses, with the Secretary's staff suggesting several rounds of changes to the draft report and arguing that "fly first class" in

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<sup>55</sup> Exhibit 21.

<sup>56</sup> *Id.*

the Secretary's employment agreement permitted Mr. Small to first class accommodations and meals, as well as car services whenever he traveled.<sup>57</sup>

Eventually, Roger Sant, as Chair of the Executive Committee, signed a letter to Cotton & Co. dated December 7, 2006, drafted by Mr. Small's office, confirming that the "fly first class" provision permitted "the Secretary to be reimbursed for travel expenditures in excess of the Federal Travel Regulation limits, such as hotel daily ceilings and ground transportation choices, without requiring prior or specific justification or approval for those expenditures."<sup>58</sup> In this letter, Mr. Sant also acknowledges that the Smithsonian selected the transactions for review by Cotton & Co. and the Acting IG and that the Smithsonian confirmed that such transactions were business related.<sup>59</sup>

Similar to Mr. Sant's representations, Mr. Small, Ms. Alice Maroni, the Chief Financial Officer, and Mr. Andrew Zino, the Comptroller, also acknowledged in a letter to Cotton & Co., dated January 4, 2007, that "[w]e are responsible for selecting the transactions for review" and ensuring that those transactions are business related.<sup>60</sup> From the Committee's interviews, it appears that the Smithsonian staff selected the transactions for review and determined the business nature of such transactions, without discussion or input with the Executive Committee or the other Regents.

Following the back-and-forth discussions among Cotton, the IG and the office of the Secretary, the scope of the Cotton review and its findings were substantially narrowed. In the Cotton & Co. report dated December 22, 2006, which was provided to the Audit and Review

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<sup>57</sup> A sample of email correspondence is attached as Exhibit 22.

<sup>58</sup> Exhibit 23.

<sup>59</sup> *Id.*

<sup>60</sup> Exhibit 24.

Committee with a transmittal letter from the Acting Inspector General<sup>61</sup>, Cotton reported unsupported expenses or those with inadequate support for mixed travel and other costs had been reduced from \$43,310.49 to \$28,565.58.<sup>62</sup> Unallowable travel expenses were reduced from \$54,911.97 to \$21,689.21 (primarily by removing costs for car services), and “other” unallowable expenses were reduced from \$68,665.40 to \$67,845.61.<sup>63</sup> In all, because of the objections of the Secretary and the representations from Mr. Sant, Ms. Maroni and Mr. Zino, the total of expenses that were either unsupported or which lacked adequate support, or which were unallowable, was reduced by nearly half, from \$210,197.89 to \$118,120.19.

The Committee would have expected the Acting Inspector General, as an independent internal investigator, to have determined the scope, transactions and standard of review, rather than having the key elements of the investigation determined by members of Mr. Small’s executive team. The Cotton & Co. report should have stated specifically that a large number of transactions were treated as “authorized” solely because the Secretary and the Smithsonian’s Executive Committee agreed that they interpreted “fly first class” to have a much broader meaning than the normal meaning of the words. The final Cotton report does not clearly state that the conclusions in the report were derived from these post-hoc interpretations by the Smithsonian.

Because at the time the report was being prepared neither the Acting IG nor the auditors from Cotton & Co. had a reporting relationship to the Board or the Audit and Review Committee, the Acting IG may have felt that she lacked the authority to reject the Secretary’s suggestions. The Committee, however, would have expected the Acting IG to have followed a

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<sup>61</sup> Exhibit 25.

<sup>62</sup> Exhibit 26.

<sup>63</sup> *Id.*

more traditional and appropriate approach in preparing the report. Similarly, the Audit and Review Committee should not have permitted the scope and results of the review to be so influenced by Smithsonian management.

**B. Mr. Small's Entertainment Expenses**

The initial rationale that Mr. Small was to have a housing allowance because he would use his home and gallery for entertainment had long been ignored by the time of the Cotton report. Mr. Sant, in his December 7, 2006 letter, stated that “the employment agreement was intended to compensate the Secretary for imputed mortgage interest.” Because Mr. Sant was not on the Board at the time the 1999 agreement was signed, he apparently relied on others at the Smithsonian to provide him with this interpretation. It appears that, when he signed this letter, Mr. Sant did not have all the background information and relevant facts regarding the housing allowance and Mr. Small's very limited use of his residence for entertaining.

Apparently as a consequence of these assertions that the housing allowance was “intended to compensate the Secretary for imputed mortgage interest” with no reference to the original justification that Mr. Small would use his home for entertainment, the review by the Acting Inspector General and Cotton investigators of entertainment expenses was as limited as the review of Mr. Small's travel expenditures.

As discussed above, Mr. Small did a negligible amount of Smithsonian entertaining at his house, and the Committee believes that the housing allowance is properly classified as cash compensation, rather than as an entertainment expense. It is difficult for the Committee, in the limited time available and without a forensic audit, to determine the reasonableness of Mr. Small's entertainment expenses.

The Cotton report and the information culled by Cotton & Co. do provide limited access to information regarding Mr. Small's entertainment expenses. First, as with all of Mr. Small's expenses, the recordkeeping is incomplete, and there is insufficient detail to analyze the business purpose of many of the Secretary's expenditures. Second, a number of the entertaining expenses incurred by Mr. Small appear to be for internal staff-related events. It is unclear if Cotton & Co. reviewed all the records relating to entertainment of donors and potential donors in its limited "agreed-upon procedures" review. Finally, what is clear is that there was no collection or analysis of entertainment expenses of the Office of the Secretary by the accounting staff, the Audit and Review Committee, or the Board of Regents on any regular basis, if at all.

**C. Mrs. Small's Travel Expenses**

The Committee has a number of serious concerns about Mrs. Small's travel on behalf of the Smithsonian.<sup>64</sup> Mr. Small's employment agreement permits him to receive reimbursement for the costs of Mrs. Small's trip for the Smithsonian where "appropriate." The Committee understands that the Smithsonian did not analyze Mrs. Small's travel to ensure that the payment of her expenses were not taxable to Mr. Small under the Internal Revenue Code. Even if properly paid for by the Smithsonian under Mr. Small's contract, the reimbursements from the Smithsonian may still be taxable income to Mr. Small. Because the Smithsonian staff was not permitted to review any aspects of Mr. or Mrs. Small's travel and the Regents did not make any inquiries into such matters, there was a complete lack of oversight to ensure compliance with the income tax rules relating to Mrs. Small's travel.

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<sup>64</sup> The Committee has attempted to piece together Mrs. Small's total travel expenses. Without doing an audit of the travel expenses of the Office of the Secretary, it is difficult to know the exact amount of her travel expenses paid for by the Smithsonian.



When an employer pays the travel expenses of an employee's spouse who travels with the employee on official business, this benefit is excludable from tax only if the spouse performs a bona fide business function on the trip. To the extent that there is no business purpose for the spouse's travel, the spousal travel expenses paid by the employer are includable in the employee's taxable income, and reportable on that employee's Form W-2 and on the tax-exempt organization's Form 990.

The courts have used a two-part analysis in determining whether a spouse has satisfied the business purpose test: (1) the dominant purpose of the spouse's travel must serve the employer's business, and (2) the spouse must actually spend a substantial amount of time assisting the accomplishment of the employer's purpose. The performance of simply "social function[s]" does not satisfy the business purpose test. Therefore, to be considered a bona fide business purpose, the spouse must do more than socializing or performing services of incidental benefit to the organization.

Where the spousal travel is taxable income to the employee and there is no contemporaneous written substantiation showing the tax-exempt organization's intent to treat the payment as consideration for services (for example, on the employee's Form W-2 or in his or her employment agreement), such payment is treated as an automatic excess benefit transaction (with penalties being imposed on board members or senior executives who approved the reimbursement) unless the organization can establish that the payment was received in exchange for other consideration.

Therefore, to ensure that no excess benefit transactions have taken place, Mrs. Small's prior travel should be reviewed to determine whether it satisfies the business purpose test

described above.<sup>65</sup> If Mrs. Small's travel is found not to have had a bona fide business purpose and it was not previously documented as compensation (i.e., on Mr. Small's Form W-2 or on the organization's Form 990), then Mr. Small's Form W-2 and the organization's Form 990 should be amended to reflect this increased income. If these amendments are made prior to the beginning of any IRS examination of Mr. Small or the Smithsonian for the years in which these benefits were provided, then they would not be considered an "automatic excess benefit" subject to penalties and reportable as an excess benefit on the organization's Form 990.

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<sup>65</sup> The Committee understands that the Smithsonian has begun this process.

## **BOARD OVERSIGHT OF MR. SMALL**

Through late 2006, the impression the IRC has from its interviews and research is that the Board failed to exercise sufficient oversight. The Committee was told that Secretary Small worked to cut off direct communications between the Regents and senior Smithsonian management. He exercised strong control over the information being presented to the Regents. He attended all Committee meetings and, according to some, even ran some of them. The Committee was told that Mr. Small actively forbade employees from sharing concerns with the Regents and, to some extent, from even communicating with them. He would not permit the General Counsel, the Inspector General or the CFO to contact the Board directly. He even refused the Inspector General's request to send her audit reports to the Board.

### **A. Mr. Small's Compensation Was Not Approved by the Board for the 2000-2003 Period**

For the years 2000 through 2003, the Board did not formally approve the Secretary's compensation. The Office of the Secretary appears to have taken the position that the Executive Committee had the authority to approve the Secretary's compensation as a result of its power to act on behalf of the Board when the Board is not in session. This position is contrary to the Smithsonian's Charter and Bylaws, as well as sound corporate governance principles. The Committee finds it troubling that the Executive Committee followed this procedure and that the full Board never questioned the practice.

The Smithsonian Bylaws, like the bylaws of many organizations, permit the Executive Committee to act between board meetings on matters that do not require full Board approval:

The Executive Committee shall have and may exercise all powers of the Board of Regents when the Board of Regents is not in session, except those expressly reserved to itself by the Board of

Regents, provided that all such proceedings shall be reported to the Board of Regents when next the Board meets.<sup>66</sup>

This grant of interim authority, however, does not apply to approval of the compensation of the Secretary because the Smithsonian Charter reserves that power to the Board: “The Secretary and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Regents.”<sup>67</sup>

The Smithsonian’s auditors requested evidence that the Secretary’s compensation was approved by the Board in 2003.<sup>68</sup> The IRC has found no such evidence. The full Board of Regents first approved Mr. Small’s compensation in 2004. Based on interviews and evidence collected, the Regents were not provided with full details of Mr. Small’s compensation and the Regents understood that Mr. Small had received only modest increases in compensation, keeping his total compensation below the 50<sup>th</sup> percentile. As discussed above, this was not correct. Mr. Small’s total cash compensation, \$774,358 in 2004, was well in excess of the 50<sup>th</sup> percentile of the comparison group hand-picked by Smithsonian management.

**B. The Board Failed to Respond to “Red Flags” and Exert Necessary Oversight**

Based on the limited information presented to the Board by Smithsonian management, it might have been reasonable for the Regents to assume that things at the Smithsonian were generally going well. But throughout Secretary Small’s tenure, a number of serious issues were raised that should have prompted detailed questions from the Board, if not an external review by the Inspector General or an outside auditor.

As early as 2001, *The Washington Post* and others in the media questioned Mr. Small’s excessive spending, noting, as discussed above, the use of a privately chartered plane for

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<sup>66</sup> Smithsonian Bylaws § 3.01, attached as Exhibit 27.

<sup>67</sup> Smithsonian Charter § 48, attached as Exhibit 28.

<sup>68</sup> Exhibit 29.

Smithsonian business. Yet the minutes and transcripts of the Board meetings give no indication that the Regents ever discussed, let alone investigated, the chartered plane incident. Had the Board done so, it would have learned, as the Committee did, that there was a viable commercial flight available (contrary to Mr. Small's claim), Mr. Small did not pay for the plane as he claimed, but rather the Smithsonian paid for it, and Smithsonian management instructed the accounting staff to alter travel reimbursement records to obscure this fact.

In May 2001, Mr. Small negotiated a gift of \$38 million from the Catherine B. Reynolds Foundation to finance a permanent exhibition at the National Museum of American History to commemorate the achievements of prominent Americans.<sup>69</sup> The gift was highly criticized by a group of Smithsonian's curators and scholars who questioned the degree of control Ms. Reynolds would have over the project (including the power to recommend 10 of the 15 members of the panel that would determine which individuals would be featured in the exhibition, as well as other supervisory powers in the development of the exhibition).<sup>70</sup> Although Mr. Small and other top-ranking Smithsonian officials claimed that the Smithsonian would have ultimate control over the nature of the exhibit, the Smithsonian community was up-in-arms regarding the loss of curator control of a major exhibit. Due to the controversy, Ms. Reynolds withdrew the gift in February 2002.<sup>71</sup> Small's handling of the gift was considered a "debacle"<sup>72</sup> and led outsiders to question Mr. Small's abilities to lead the Smithsonian.<sup>73</sup> In response, the Regents revised grant

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<sup>69</sup> Jacqueline Trescott, Smithsonian Toasts \$38 Million Donor, WASH. POST, May 10, 2001 at C3.

<sup>70</sup> Jacqueline Trescott, Smithsonian Gifts With Strings Alarm Some Scholars; Secretary's Dealings With Big Donors Questioned by Staff, WASH. POST, May 26, 2001 at C1.

<sup>71</sup> Jacqueline Trescott, Smithsonian Benefactor Cancels \$38 Million Gift, Wash. Post, Feb. 5, 2002 at A1; *see also* 60 Minutes – CBS News, Who is Catherine Reynolds? (Dec. 2002), *available at* <http://www.cbrf.org/video/60min.html>.

<sup>72</sup> Larry Van Dyne, Money Man, WASHINGTONIAN, Mar. 2002.

<sup>73</sup> Editorial, Smithsonian Pluses and Minuses, N.Y. TIMES, Feb. 7, 2002 at A28 ("there is reason to question [Small's] leadership").

approval processes to include Board approval in certain instances, but there was no additional inquiry into the apparent lapses in judgment that lead to the controversy.

In October 2001, Milo Beach, the long-standing director of the Freer and Sackler galleries of Oriental art resigned, citing Small's preference for "good administrators" over scholars, giving the impression, Beach said, that the secretary viewed "the life of the mind with astonishing indifference."<sup>74</sup> There was also criticism from within the Smithsonian regarding Mr. Small's oversight, or lack thereof, of the SBV, with a number of museums paying SBV not to run their museum's shops and other business ventures. And finally, in 2004, Secretary Small pled guilty to the illegal importation of bird feathers into the United States.<sup>75</sup>

After these public reports of misconduct, possible unapproved use of funds and mismanagement, the Board should have commissioned and overseen an independent, objective review of the issues that had been raised, without any involvement of the Secretary. Rather than doing this, the Board allowed Mr. Small to maintain control over the Board and its processes. Mr. Small continued to dominate committee meetings, set meeting agendas, and determine, without informing the Board, who would contact the Regents and what information would be provided them. During Mr. Small's tenure, it often appeared that the Board reported to him rather than the other way around. The Committee was told by one Regent that the Secretary "did not listen to the opinions of the Regents" and "did not seek input from the Regents in decision making." Another commented that the Secretary did not seek advice, only approval.

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<sup>74</sup> Larry Van Dyne, Money Man, WASHINGTONIAN, Mar. 2002.

<sup>75</sup> In January 2004, Mr. Small pled guilty to a misdemeanor violation of the Migratory Bird Treaty Act arising from his 1998 purchase of a "\$400,000 collection of tribal articles that contained 219 items with endangered feathers." Jacqueline Trescott, Smithsonian's Small Still Awaits Word on Community Service, WASH. POST, Feb. 23, 2005, at C1. Small was sentenced to two years' probation and 100 hours of community service, and was required to submit letters of apology to national publications. Jacqueline Trescott, Small Gets 2 Years' Probation; Smithsonian Secretary Bought Protected Artifacts, WASH. POST, Jan. 24, 2004, at A1.

Mr. Small's management and control of the Board had an adverse impact on effective oversight by the Regents. In addition, the former Chancellor of the Smithsonian ran the Board meetings on a very tight schedule, limiting the number of comments and questions any Regent was permitted to ask and moving quickly through the afternoon agenda. The former Chancellor's desire to avoid lengthy meetings allowed only for limited debate by and discussion among the Regents. Therefore, their ability to analyze issues and get behind the well-orchestrated materials provided to them by the Office of the Secretary was compromised.

It was only after several years that the Smithsonian's Acting Inspector General and Chief Financial Officer finally retained an independent auditor to evaluate the Secretary's expenses. The resulting report, however, as with the compensation consultants' studies, was controlled by Smithsonian management's formulation of the scope of the assignment. Moreover, after receiving the Cotton & Co. report, the Regents passed two resolutions, both of which approved retroactively expenses that the Cotton & Co. consultant had challenged. Evidence collected by the Committee shows that these resolutions were written in the Office of the Secretary, which, in effect, controlled the outcome of this review.

In defense of the Regents, it must be noted that neither the Secretary's office nor the Acting IG provided the Audit and Review Committee with the full details of the Cotton & Co. work. The Regents received only the much-sanitized final report and a transmittal letter from the Acting Inspector General, along with an even-more innocuous summary of just over one page prepared by the Secretary's office.<sup>76</sup> With this limited information in front of them, the Audit and Review Committee approved the resolutions prepared by Mr. Small and recommended them to the full Board of Regents. The Committee believes that the members of the Audit and Review

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<sup>76</sup> Exhibit 30.

Committee and the Regents, in fully exercising their fiduciary duties, should have been more diligent in understanding how the Cotton & Co. report was prepared, questioning the Acting IG and Cotton & Co. investigators and understanding the scope of their investigation, along with the limitations placed on, and the assumptions used in formulating, the report.



**PARTICIPATION ON OUTSIDE BOARDS AND  
ABSENCES FROM THE SMITHSONIAN OFFICES**

One of the most disturbing failures of governance and oversight uncovered by the Committee in its investigation relates to the service on outside boards by Secretary Small and Deputy Secretary Burke, the amount of time spent by them, especially Ms. Burke, on these outside duties, and the leave policies and practices that permitted the two top executives of the Institution to be frequently absent from the office without the knowledge or approval of the Board of Regents. Serving on outside boards – profit and nonprofit – may provide benefits to senior executives: exposure to leading governance practices, sharpening of strategic planning skills, connecting with potential donors and mentors. But the potential for conflicts of interest, or perceptions of such conflicts, raises serious issues for those who serve in executive capacities at entities largely funded by taxpayer dollars.

**A. Mr. Small's Board Service**

Mr. Small's contract provided that he could serve on up to two outside boards, and retain the income from such service, subject to approval by the Executive Committee and review by the General Counsel, as the Chief Ethics Officer.<sup>77</sup> Throughout his tenure as Secretary of the Smithsonian, Mr. Small served on the Boards of the Chubb Corporation ("**Chubb**") and Marriott International Inc. ("**Marriott**"), earning \$642,925 in cash compensation, \$3.5 million in stock compensation and \$1.8 million in stock option compensation during this period.<sup>78</sup> The Committee has not found, and was not provided with, any formal approval by the Executive Committee of Mr. Small's service on the Chubb and Marriott boards or review by the General Counsel. Some current and former members of the Executive Committee, and most Board

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<sup>77</sup> See Employment Agreement, ¶ 9, attached as Exhibit 5.

<sup>78</sup> A chart detailing Mr. Small's compensation from outside service is listed in Exhibit 31.

members, admitted knowing, through personal knowledge, press reports or anecdotally that Mr. Small served on one or both of these boards, but there was no systematic briefing of, and review and approval by, the Executive Committee or the Regents of Mr. Small's outside board service. Based on calendars and other records made available to and collected by the Committee, it appears that Mr. Small was absent from the Smithsonian for 64 days for-profit board service during his tenure.<sup>79</sup>

As an employee of the Trust, Mr. Small was not covered by federal regulations that prohibit outside for-profit board service by high-level government officials. In addition, the lack of a leave policy for Mr. Small allowed him to take unlimited time off work to fulfill his service on corporate boards. The same is true for Ms. Burke.

In analyzing Mr. Small's outside board service, it is particularly important to understand the issues raised by his service on the Chubb board, and how this was handled by the Smithsonian. When he became head of the Smithsonian, Mr. Small was already serving on the Chubb board. Ms. Burke was also serving on the Chubb board when she was appointed Deputy Secretary and Chief Operating Officer. The Smithsonian purchases insurance from the Chubb. It is an obvious conflict of interest for an organization to purchase insurance from a company on whose board the organization's chief executive and chief operating officers sit. To be handled properly, such a conflict must be fully disclosed, and the conflicted employees must be removed from any involvement in decisions regarding the organization's dealings with the company on whose board these employees sit. When the conflicted employees are the organization's senior executives, the decision for doing business with the company should be removed from lower-level employees, who might believe themselves obligated to steer business to a company on

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<sup>79</sup> *See id.*

whose board their superiors serve. The final decision to do business with such a company should rest with the organization's board. This is a "best practice" of governance that the Smithsonian did not follow.

When Mr. Small was chosen as the Secretary in 1999, Wesley S. Williams Jr., the Chair of the Search Committee, knew, and at least some other members of the Search and Executive Committees appear to have known, that Mr. Small served on the Chubb and Marriott boards. There is, however, no indication that all members of the Executive Committee knew of Mr. Small's outside board service or ever formally approved his service on these boards, as required by his employment agreement. Nor did the Board inform any members of the Smithsonian staff of Mr. Small's board service or establish any process for monitoring and handling conflicts of interest that might arise.

Senior Smithsonian officials and employees with contracting authority are required to complete conflict of interest forms each year. Mr. Huerta, as the Chief Ethics Officer, collects these forms (over 1,000 of them each year) and he and his staff review them and follow-up on all potential conflicts uncovered through this process. From the time Mr. Huerta joined the Smithsonian in 1995 until 2004, he, as the Chief Ethics Officer, did not receive copies of conflict forms for the Secretary and his senior staff. These employees would send their forms directly to Mr. Hobbins. Mr. Huerta was not allowed to see the disclosure forms or to know their contents. In its interviews of current and former Regents, the IRC was told in every instance that the conflict forms were not provided to the Board, and none of the Regents recalls being informed that such forms were available for their review. It appears, therefore, that the conflict of interest forms of senior executives were not being reviewed and potential and actual conflicts were not

being discussed by the Smithsonian until 2004, when the Board decided that Mr. Huerta should receive and review all conflict disclosure forms.

While Mr. Huerta did not receive conflict of interest forms until 2004, he learned earlier from office conversations of Mr. Small's and Ms. Burke's service on the Chubb board. Around the same time, he also learned of Ms. Burke's service when she returned from a Chubb board meeting to deal with a Smithsonian crisis. After these events, Mr. Huerta asked Mr. Small to formally recuse himself and Ms. Burke from the purchase of the Institution's insurance by sending such a letter to Mr. Huerta, as Chief Ethics Officer. Although Mr. Small agreed, Mr. Huerta never received such a letter. The Committee understands from its interviews that Mr. Small never discussed the request with Ms. Burke.

Mr. Huerta did contact the Treasurer, who is responsible for purchasing the Smithsonian's insurance. Mr. Huerta told the Treasurer about the conflicts. The Treasurer assured Mr. Huerta that neither Mr. Small nor Ms. Burke had ever been involved in the purchase of insurance. Mr. Huerta and the Treasurer agreed to wall-off Mr. Small and Ms. Burke from any such decisions in the future. Mr. Huerta never contacted Ms. Burke about this issue and never asked Mr. Small about it again.

Mr. Huerta also did not report these conflict issues to the Audit and Review Committee. It was his understanding that the Audit and Review Committee saw the disclosure forms each year and that the Committee knew that Chubb provided insurance to the Smithsonian. Mr. Huerta, therefore, assumed that the Audit and Review Committee, with full knowledge of the facts, had chosen not to take any action on the conflicts issue. It is unclear to what extent Mr. Huerta's assumptions were correct.

**B. Mr. Small's Leave from the Office**

The Smithsonian had no uniform leave policy for its senior executives. While leave for some senior executives was specified in their appointment letters, neither Mr. Small, nor Ms. Burke, had any limits on their leave. From its interviews, the Committee understands that all or most of the Regents were never informed and did not know of the absence of a policy or the unlimited leave for Mr. Small and Ms. Burke. The absence of a uniform leave policy appears to pre-date Mr. Small's appointment as Secretary.

The Committee finds a policy of unlimited leave for senior executives unacceptable, especially without very close oversight by the Board. According to Mr. Small's calendar, in each full year of his employment except 2006, he took more than 10 weeks of vacation. (In 2006, he took eight weeks.)<sup>80</sup> In addition, he took 64 days of leave during his time with the Smithsonian to fulfill his service on the Chubb and Marriott boards. Moreover, it appears that Mr. Small did not make himself regularly available during these extended absences from the office. The Committee learned from its interviews that Mr. Small was frequently out of the office and unreachable when needed for Smithsonian business.

It is obviously not appropriate for the Smithsonian to have an unlimited leave policy for senior staff. The concern is intensified by the fact that the Board was unaware of both the policy and the excessive use of personal leave by Mr. Small. Moreover, the difficulties for the Smithsonian of an absent chief executive were exacerbated by Ms. Burke's even more frequent absences from the office.

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<sup>80</sup> A chart detailing Mr. Small's total time out of office is attached as Exhibit 32.

### C. Ms. Burke's Outside Activities

More disturbing to the Committee are Deputy Secretary Burke's extensive outside activities and their effect on her ability to focus on the significant duties she has at the Smithsonian. While a full-time employee of the Smithsonian, in its second most senior executive position, Ms. Burke serves on two outside for-profit boards (Chubb and Wellpoint), serves on more than a dozen nonprofit boards and commissions, and continues to serve as an active member of the faculty of Harvard's Kennedy School of Government.

From 2000 through 2006, these outside activities provided her with \$1.2 million in cash compensation, \$3.5 million in stock compensation and \$5.6 million in stock option compensation<sup>81</sup> – far exceeding her salaried compensation from the Smithsonian, currently \$400,000 annually. Further, an analysis of her calendar and other data obtained by the Committee show that she spent more than 400 work days away from her office performing non-Smithsonian activities.<sup>82</sup> This represents almost two full work years or about one-quarter of her normal working time during her tenure with the Smithsonian.<sup>83</sup>

As promised, the Committee delivered to Ms. Burke's counsel its preliminary findings regarding her outside activities, including both outside board service and leave. In letters to the Committee's counsel, Ms. Burke's counsel contended that some of the preliminary findings were not accurate.<sup>84</sup> The Committee reviewed again the available documents, and concluded that certain adjustments needed to be made. Those adjustments are reflected in this report.

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<sup>81</sup> A chart detailing Ms. Burke's outside compensation is attached as Exhibit 33.

<sup>82</sup> *See id.* Ms. Burke's annual vacation, which averaged about four weeks during this time period, is not included in this estimate.

<sup>83</sup> Attached as Exhibit 34 is a chart compiled by the IRC detailing Ms. Burke's total time out of office.

<sup>84</sup> Exhibit 35.

Ms. Burke told the IRC that she works 24 hours a day, seven days a week and that she is and has always been available by email or cell phone whenever Smithsonian staff need to contact her. She also states that she always takes work with her on vacation. Those interviewed by the IRC indicated that Ms. Burke has a strong work ethic. In interviews with the Committee, many employees noted that, unlike Mr. Small, Ms. Burke was available by phone and email when she was out of the office. There is, however, no substitute for the in-person presence of an organization's Chief Operating Officer on a daily basis. This position, more than many others, requires one's presence in the office, especially given the size and complexity of the Smithsonian. Clearly, Ms. Burke has not been satisfying this very basic job requirement in a normal manner. Moreover, the compensation issue here goes well beyond perception. If one's income from outside sources far exceeds the income from his or her main employment, it is difficult to believe that the primary employer is getting the full attention it deserves.

It is the IRC's understanding that Ms. Burke's outside board activities were approved by Mr. Small, not the Board of Regents, and there is no indication that the Regents knew the extent of Ms. Burke's outside activities. The IRC questions Mr. Small's judgment in approving such extensive outside commitments and his failure to inform the Board. Moreover, Ms. Burke disclosed her outside activities on her annual conflict of interest forms and provided the forms, through 2003, to Mr. Hobbins in the Secretary's office and, from 2004, to Mr. Huerta. There is no evidence, however, that these forms were provided to the Board or that the Board was informed of the contents of such forms. The Board's failure to uncover such a significant issue

highlights the extent to which the Board was kept in the dark and failed to ask very basic questions about the Smithsonian's operations.<sup>85</sup>

As a general rule, the Smithsonian has been most careful in monitoring the outside work of its employees. The exceptions have been Mr. Small and the Deputy Secretary. As discussed above, these outside commitments have taken these individuals away from the Smithsonian during working hours for significant periods of time. The Board must develop a uniform policy on outside work and the Board itself must carefully monitor this when it comes to the leadership of the Institution. The IRC sees little benefit to the Smithsonian in allowing its senior executives to serve on the boards of for-profit corporations. Accordingly, as discussed below, the IRC recommends that the Board prohibit its executives from serving on the boards of for-profit corporations.

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<sup>85</sup> Ms. Burke's counsel, in his June 7, 2007 letter to the Committee (attached as Exhibit 35), noted the following:

"I thought it very important that the Committee's report make plain that Ms. Burke accepted employment with the Smithsonian on the express understanding that she could engage in various outside activities, including teaching at Harvard University and serving on boards of profit and non-profit organizations.... [I]t is essential that the report make clear that Ms. Burke disclosed her outside activities and the compensation she received in her annual Smithsonian financial disclosure statement, and that she was never asked to curtail those activities."



## **INTERNAL FINANCIAL CONTROLS**

Internal financial controls are systems of policies and procedures that create reliable financial reporting, promote compliance with laws and regulations and achieve effective and efficient operations. These systems should include:

- handling funds received and expended by the organization
- preparing appropriate and timely financial reporting to the board and management
- conducting the annual audit
- evaluating staff and programs
- implementing personnel and conflict of interest policies.

In the nonprofit context, an essential element of good financial controls is a system for assuring that expenses are properly documented, support the organization's mission and are not lavish or extravagant. The IRC found that the Smithsonian's systems for handling the expenses of the Secretary and other members of senior management were not adequate for providing this assurance. Basic failures of internal controls put the Smithsonian and its Regents at risk of liability and adverse publicity.

### **A. No Review of Secretary's Expenses**

Basic internal controls require that the expenses of everyone in an organization be subject to review by someone in the organization. With respect to the chief executive of an organization, such review needs to be done by someone with access to the organization's audit committee. It appears that, until the most recent review by Cotton & Co., neither the Chief Financial Officer nor the Inspector General has reviewed the Secretary's expenses for reasonableness over the last seven years. As discussed above, the Cotton & Co. review was not an audit of such expenses and the issue of reasonableness had been negotiated out of the review.

**B. No Approval for Exceptions to Smithsonian Policies**

The Smithsonian had detailed travel and other expense policies and procedures that applied to everyone, including the Secretary. Mr. Small had negotiated a contractual right to first class air travel, which would not have been permitted under the Smithsonian's policies except in extraordinary circumstances, though he remained subject to the remainder of the Smithsonian policies. The IRC learned that at the beginning of 2000 and 2001 the Executive Assistant signed blanket authorizations for Mr. Small.<sup>86</sup> The Office of the Secretary has also asserted that Mr. Small had the authority to waive the application of the Smithsonian policies as they applied to him, though it cited no authority for this position. Such blanket authority eliminated accountability and critically undermined the internal controls of the Smithsonian.

The IRC found that several transactions involving Mr. Small, such as the charter jet to and from San Antonio and certain of Mrs. Small's travel, should have been subject to prior review and approval outside the Office of the Secretary. The blanket authority exercised by the Office of the Secretary in spending Smithsonian funds without any objective determination as to whether these funds were being spent in support of the Smithsonian mission and in accordance with Smithsonian policies represented a significant failure of internal controls.

**C. Inadequate Record Keeping**

Nonprofit organizations must properly document expenses incurred in the conduct of the organization's activities to evidence reasonableness and relatedness to the mission. With respect to Mr. Small's expenses, the Smithsonian failed to do so. The backup documentation to support Mr. Small's expenses was maintained in the Secretary's office, rather than with the Chief Financial Officer, so the Chief Financial Officer essentially had no way to audit the Secretary's

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<sup>86</sup> Exhibit 36.

expenses. There was never a review or even spot-checking of the expense records maintained by the Office of the Secretary,

**D. Insufficient Accounting Resources**

The accounting staff of the Smithsonian has been reduced by about fifty percent during Mr. Small's tenure. As KPMG noted in its recent audit letter, accounting personnel in the Office of the Comptroller were "stretched thin."<sup>87</sup> The IRC is thus sensitive to the fact that the accounting staff was trying to fulfill its increasingly more difficult internal financial control responsibilities with less and less resources. It was particularly troubling to learn that the Smithsonian had reduced its accounting personnel at the same time that it was implementing a new accounting system, as the implementation of new systems generally requires a ramp-up of personnel.

**E. Ineffectiveness of Accounting Staff**

The IRC found no evidence that anyone on the accounting staff of the Smithsonian, including the Chief Financial Officer, ever raised any concerns that the Office of the Secretary was compromising the Smithsonian's internal controls. Raising such concerns about an organization's chief executive, while undoubtedly difficult and fraught with personal risk, is nonetheless the correct action for a chief financial officer.

In 2002, the Audit and Review Committee considered whether any parts of the Sarbanes-Oxley legislation should be adopted by the Smithsonian. It appears that the Board took no action to implement any aspects of this legislation.

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<sup>87</sup> Letter from KPMG to The Audit and Review Committee of the Board of Regents and the Inspector General, dated February 20, 2007, attached as Exhibit 37.

## **ROLE OF THE “GATEKEEPERS”**

### **A. Role of the Smithsonian Inspector General**

The Office of the Inspector General (“**OIG**”) in the Smithsonian Institution is an independent, objective office within the Smithsonian. The OIG is charged with conducting and supervising audits and investigations relating to Smithsonian programs and operations and preventing and detecting fraud, waste, and abuse in Smithsonian programs and operations. The Inspector General at the Smithsonian is subject to provisions of the Inspector General Act of 1978, as amended, which provides what is expected of an Inspector General.<sup>88</sup>

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on our reviews.

For the period 2000 to the present, there have been three Inspectors General at the Smithsonian. Thomas Blair served as the Inspector General through the end of 2004. Debra Ritt, the former Deputy Inspector General at the Department of Transportation, served as Inspector General from January 2005 through June 2006. A. Sprightley Ryan, the current Inspector General, previously served as counsel to the former Inspector General on a part-time basis, and became Acting Inspector General in July 2006. She was appointed Inspector General in March 2007. Ms. Ritt told the IRC that it became evident that she could not carry out the full duties and responsibilities of an IG, and she left the Smithsonian after 18 months.

From 2000 until 2006, the OIG performed no audits or investigations of any matters relating to executive compensation or expenses at the Smithsonian. This absence of activity by

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<sup>88</sup> 5 U.S.C.A. Appx. §1 (2001).

the OIG is surprising. First, the Inspector General is expected to perform periodic audits of expenses to satisfy his or her obligation to detect fraud. Second, public allegations regarding the inappropriate use of Smithsonian funds for travel by the Secretary's office should have prompted an investigation by the OIG. In particular, in August of 2001, *The Washington Post* reported that a Smithsonian spokesperson had stated that Small had created a discretionary fund with his own money "to pay for extraordinary expenses," and had used \$14,600 from this fund to pay to charter a Learjet.<sup>89</sup> This is inaccurate because the jet was paid for with Smithsonian funds. The Committee finds it very troubling that these public allegations of wrongdoing did not prompt an OIG investigation.

Until June 2006, the Inspector General reported to the Secretary rather than the Board of Regents. In 2006, Mr. Small moved the OIG's office out of the District to Crystal City in Virginia. Removing the Inspector General from the Smithsonian's central offices has the inevitable effect of eliminating the day-to-day interactions with Smithsonian staff that are conducive to the effective performance of the OIG's duties. Moreover, not having the OIG present in the Smithsonian's central office would also appear to violate at least the spirit of the Inspector General Act of 1978, as amended, which requires the Secretary to "provide the [OIG] with appropriate and adequate office space at central and field office locations."<sup>90</sup>

#### **B. Role of the General Counsel**

The General Counsel should serve a "gatekeeper" role by monitoring compliance of senior management with laws and policies. This is particularly true at the Smithsonian where the General Counsel also serves as the Chief Ethics Officer. The General Counsel, however, did not

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<sup>89</sup> WASH. POST, Aug. 7, 2001, at C3.

<sup>90</sup> 5 U.S.C.A. Appx. § 6(c) (2001).

play this monitoring role because Mr. Small not only isolated him from the Board of Regents, but also blocked him from having any meaningful oversight of the Secretary's office. The Smithsonian's own Charter further inhibited the General Counsel from playing the gatekeeper role because it designates the Secretary, rather than the General Counsel, to be the corporate secretary of the Institution.

A telling example of Mr. Small's isolation of the General Counsel and his office occurred within weeks of the new Secretary's arrival at the Smithsonian. Soon after Mr. Small took office as the Secretary, he came, at Mr. Huerta's invitation, to talk at a staff meeting of the General Counsel's office. One of the staff attorneys asked Mr. Small how he saw the role of the Office of General Counsel under his leadership. It was reported to the Committee that Mr. Small responded that he did not think that lawyers served a constructive purpose and that the lawyers at the Smithsonian should, in effect, keep out of his way. The Committee was told that members of the General Counsel's office felt this set the tone for Mr. Small's interaction with the legal department throughout his tenure.

Another example of how Mr. Small ignored and worked around concerns raised by the General Counsel's office occurred as soon as he was hired. As one Smithsonian employee put it, right from the beginning, Mr. Small demonstrated an attitude that the rules did not apply to him. One of the first exhibits to be mounted under Mr. Small's leadership was an exhibit on the American Presidency. There was an amount budgeted for this exhibit that was approved by the Board of Regents. Prior to Mr. Small, if there were any significant deviations from a budget item approved by the Board, the staff was required, by the terms of the Board resolution, to go back to the Board for approval for a revised budget.

In planning the exhibit, Mr. Small announced his plan to reallocate funds to the exhibit from other budget items. According to information provided to the Committee, the General Counsel informed Mr. Small that he had to obtain Congressional permission and approval from the Board or the Executive Committee for such reallocations. Mr. Small was described as “mad” that a staff member had raised a roadblock to Mr. Small’s plans, and he refused to go back to the Board. He did seek Congressional authorization, but his request was denied.<sup>91</sup>

As with the accounting and finance and other staff, the staff of the General Counsel’s office was cut during Secretary Small’s tenure, as the size and complexity of the workload increased. This had the adverse effect of limiting the General Counsel’s office involvement in governance and ethics issues. The much-reduced staff of the General Counsel’s office was fully occupied with the day-to-day crises of providing legal support to a \$1 billion-a-year Institution. One tangible result of these cuts was the elimination of ethics training for employees by the General Counsel’s office. These cuts also made it difficult for the General Counsel to maintain a rigorous ethics program and prohibited him from having a dedicated lawyer responsible for ethics, conflicts of interest and governance issues, which, in the Committee’s view, can only strengthen oversight within the Institution.

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<sup>91</sup> Exhibit 38.

## **ROLE OF OUTSIDE AUDITOR**

KPMG has served as the outside auditor for the Smithsonian for the last thirteen years. The IRC has reviewed the audited financial statements and KPMG management letters for the reporting years 2000-2006.

During that period, KPMG did not audit the expenses of the Secretary, either on its own initiative or at the request of the Board or the Audit and Review Committee. To its credit, as early as 2000, KPMG recommended that the Smithsonian “assign a high priority to obtaining funding for a new core financial system and to developing a timetable for implementation of that system.”<sup>92</sup> In 2002, the Smithsonian began to implement the KPMG recommendation by installing the PeopleSoft system. The Smithsonian accounting staff was reduced by almost half in the same year. This reduction in staff, coming at a time when staff needed to be increased to implement the new system, should have been a warning that there were inadequate resources for the implementation of the new system.

The chronic understaffing of the accounting department over the 2000-2006 period was not consistently noted by KPMG until its most recent management letter, when such understaffing had finally risen to the level of a reportable condition: “The reportable conditions noted during our audit ... relate to the accounting resources and staff capacity.”<sup>93</sup>

The Smithsonian also failed to implement another recommendation made by KPMG in 2002:

The Smithsonian’s practices for communicating and documenting accounting policies and procedures have generally been informal. . . . We believe the Smithsonian would benefit from a

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<sup>92</sup> KPMG letter to The Audit and Review Committee of the Board of Regents dated April 4, 2001, attached as Exhibit 39.

<sup>93</sup> KPMG letter to The Audit and Review Committee of the Board of Regents dated February 20, 2007, attached as Exhibit 37.



more formal approach to the documentation of its accounting policies and procedures. Accordingly, we recommend that the Smithsonian consider assigning a team to assume responsibility for developing a comprehensive accounting policies and procedures manual in 2002. This manual would provide information about the application of significant accounting policies and guidance on related procedures, including requirements for documentation of the review/approval procedures performed. It could be made available on the network and would provide a valuable reference source for accounting and management personnel and a useful training tool for new employees or employees who change responsibility.<sup>94</sup>

While the Smithsonian agreed with this recommendation, it apparently took limited action to develop the policies and procedures manual. Although the KPMG engagement partner had an annual meeting with Mr. Small, very limited progress resulted over a six year period. Five years after its first recommendation, KPMG was still calling for the development of the manual.<sup>95</sup> The Smithsonian, though supporting the concept of such a manual, did nothing, stating that “[f]unding and staffing limitations will limit our ability to develop and finalize this manual in the near term.”<sup>96</sup>

In sum, while KPMG noted the weakness in internal controls at the Smithsonian as early as 2000, it was not an effective advocate for reform and action with its client. Suggestions were ignored. Yet KPMG waited over five years, until February 2007, to label the inadequacy of accounting resources and staff a “reportable condition.”<sup>97</sup> The IRC is concerned that KPMG may have had a complacent relationship with the Smithsonian.

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<sup>94</sup> KPMG letter to The Audit and Review Committee of the Board of Regents dated April 9, 2002, attached as Exhibit 40.

<sup>95</sup> KPMG letter to The Audit and Review Committee of the Board of Regents dated February 20, 2007 (“we recommend the Smithsonian develop a plan and timetable for compiling and maintaining an accounting policies and procedures manual in 2007.”), attached as Exhibit 37.

<sup>96</sup> *Id.*

<sup>97</sup> “Reportable conditions” under standards established by the American Institute of Certified Public Accounts are matters that, in the judgment of the auditor, relate to significant deficiencies in the design

## SMITHSONIAN BUSINESS VENTURES

In the course of its review, the Committee understands that there have been significant failures of internal controls and inappropriate conduct at SBV. For example, the Inspector General, in her review of executive compensation, found that SBV's accounting system had weaknesses.<sup>98</sup>

Senator Grassley has indicated his desire for the Committee to conduct a review of the senior management of SBV and the appropriateness of compensation and benefits paid to senior management of SBV. While the Committee agrees that such a review is necessary and warranted, it is beyond the scope of the Committee's review. Based on the information collected by the Committee, however, there was inadequate oversight of SBV by Smithsonian senior management and the Board. Neither the Board nor the Smithsonian executives who sat on the SBV board, including the Chief Financial Officer and the Chief Operating Officer, has taken appropriate actions to remedy the deficiencies in governance and accounting controls at SBV, even though all acknowledged the widespread allegations of inappropriate activity and failures of internal controls at SBV.

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or operation of internal control and could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with assertions of management in the financial statements. *Id.*

<sup>98</sup> Smithsonian Institution, Office of the Inspector General, Executive Compensation at Smithsonian Business Ventures I, Report No.A-06-02, January 19, 2007. As of the date of this report, the Inspector General had not released the second part of her report on SBV.

## **OVERALL ETHICAL TONE AT THE SMITHSONIAN**

The ethics of an organization usually reflect the attitude and behavior of those in senior management. There was a clear indication that the Secretary and those whom he selected deemed themselves outside the Smithsonian's otherwise recognized ethics standards. Accordingly, given the "tone at the top" set by the Office of the Secretary, one might expect to find the absence of internal controls and ethical lapses to be pervasive at the Smithsonian. While it did not undertake a comprehensive review, the evidence the Committee did collect indicates that there does not appear to be major internal control issues at the Smithsonian as a whole, other than in the Office of the Secretary and at Smithsonian Business Ventures. Similarly, the Committee found no evidence to indicate that the strong ethical principles that have characterized the Smithsonian over the years have been compromised.

## **RECOMMENDATIONS**

The Committee recommends that, wherever possible, the Board of Regents should implement the following recommendations by reorganizing its internal governance structures and procedures. The Committee, however, offers no legal opinion as to whether these recommendations can be implemented solely by the Board of Regents. If the implementation of any recommendation requires legislative action, the Committee urges the Board of Regents to promptly seek Congressional assistance.

**1. The Regents Must Act Quickly to Address the Governance Crisis**

The current crisis of governance at the Smithsonian and the resulting loss of public confidence necessitate urgent action by the Regents. To restore public and Congressional confidence, the Regents must devote substantial time and resources over the next several months to considering and then implementing the chosen governance recommendations from the IRC and the Smithsonian's Committee on Governance. To the extent that any of the recommendations discussed in this Report require Congressional action, the Regents should ask Congress to act quickly to address these recommendations with appropriate legislation. If the Regents meet regularly over the next few months, the IRC believes the necessary governance changes can be implemented by the end of the year.

**2. The Expenses of Mr. and Mrs. Small Should be Subject to an Audit for Reasonableness and the Expenses of Senior Management Should Be Subject to Annual Audits**

The Committee did not conduct a complete audit of Mr. Small's expenses. Rather, the Committee reviewed the work of Cotton & Co. and the backup materials for its review. Thus, there has been no independent audit of Mr. Small's expenses. If for no other reason than potential tax liabilities and automatic excess benefit excise taxes, the Committee recommends

that the Smithsonian have an independent auditor perform an audit of Mr. Small's expenses, as well as those attributable to Mrs. Small. The Committee believes this audit could be done expeditiously because the bulk of the work has been completed by Cotton & Co.

The Committee also recommends that the Audit and Review Committee of the Smithsonian undertake to have the expenses of senior management audited on an annual basis for compliance with Smithsonian policies and reasonableness.

3. **The Compensation of the Secretary Should be Reasonably Competitive and Transparent and Take Into Account the Smithsonian's Unique Nature**

Arguments have been made for a wide range of "appropriate" compensation levels for the Smithsonian Secretary. At the low end, some people have questioned why the Secretary should earn more than the Vice President of the United States (currently \$215,700), or alternatively the President (\$400,000). The rationale is that no federal employee earns more than these positions, and since more than seventy percent of the Smithsonian's budget comes from the federal government, these limits should apply as well. At the other extreme, others have argued that the Secretary should receive the salary of comparable for-profit CEO's.

The IRC finds neither of these extremes persuasive. The salaries for the President and Vice President of the United States in no way reflect the enormous responsibility and influence of these positions. Further, it is not uncommon in government-sponsored organizations to have individuals with specific abilities paid more than the leader of the related government. In many states, for example, the heads of the state universities are paid salaries well in excess of the Governor, and the coach of the football or basketball team is compensated well in excess of the university president.

Nor is comparison with the private sector appropriate. In the private sector, an individual capable of leading an organization as vast and complex as the Smithsonian would probably earn total compensation (salary, incentive compensation, stock compensation, and benefits) well in excess of \$1 million per annum.

The Smithsonian is not a private enterprise. Most of its funding is provided by the federal government with substantial help from private donors. Many of the individuals working there – scientists, curators, employees at the National Zoo, former Secretaries and others – have done so because of a love of their profession and the institution. Earnings are not their first priority. They recognize that as part of a nonprofit organization they cannot expect to earn what they could in the private sector. The Regents and the next Secretary should think this way as well. The Committee believes that such high compensation is inappropriate for a nonprofit executive, especially for an executive working at a nonprofit that receives significant government funding.

Given the special nature of the Smithsonian and the honor associated with being its Secretary, we acknowledge that a well-qualified individual, ready for a new phase in his or her career, might offer to serve as Secretary for a nominal salary. If this occurs it should be understood that the search for a new Secretary is not in any way limited by this possibility and that the Secretary's salary does not limit paying appropriately competitive salaries for other important positions at the Smithsonian – the undersecretaries, museum directors, key scientists, and other key staff members.

We consider it beyond our authority to provide specific guidance as to the specific compensation level for the next Secretary. However, in determining this level, we recommend that the Regents develop a compensation philosophy that is:

- **Transparent.** Whatever compensation is provided the Secretary, the amount of compensation and its elements should be reported clearly in filings with the federal government and in the Smithsonian's annual report. The Regents should go beyond the minimum IRS requirements for reporting compensation on the Form 990, perhaps using a format similar to the "Compensation Disclosure and Analysis" now required by the SEC, clearly describing the organization's compensation philosophy, the process used to determine executive pay, and each element of compensation for top officers.
- **Reasonable.** The Secretary's compensation, and that of other senior positions at the Smithsonian, should be at levels that people with an understanding of general compensation practices for nonprofit managers in the Washington metropolitan area will agree are reasonable. Given the variety of views on what positions are worth, we do not expect that everyone will believe that whatever the Secretary is paid will be reasonable. But the Secretary's compensation should appear reasonable to the Congressional Committees responsible for Smithsonian oversight and to the public at large. In setting the salary, the Regents and all other stakeholders, including Congress, must acknowledge that the Smithsonian is a remarkably varied and complex institution and that the leadership of the Smithsonian requires a range of knowledge, experience and skills – an understanding of science and art, the ability to manage complex organizations, the ability to raise substantial funds, diplomacy in dealing with Congress and other stakeholders, and the ability to integrate different organizational units while respecting their individuality.
- **Competitive.** One of the most important decisions the Regents will make is determining an appropriate comparison group on which to base the Secretary's compensation package. One could selectively pick nonprofits – the Kennedy Center and the Getty Museum come to mind – to justify a very high level of compensation for the Secretary. The Committee feels that rather than a selective comparison, the appropriate group should include museums, universities, and other major nonprofits in the Northeastern United States with budgets of the size of the Smithsonian and activities of similar scope. Universities in the comparison group should emphasize public institutions, which like the Smithsonian receive substantial funding from governments.
- **Pegged at the 50<sup>th</sup> percentile (or median).** Smithsonian documents show that in the beginning of Secretary Small's tenure, the Executive Committee targeted all management compensation at the 50<sup>th</sup> percentile. At Mr. Small's urging, this was changed early on to the 75<sup>th</sup> percentile and a skewed comparison group was selected by Smithsonian management. This is not an acceptable approach. The Smithsonian's management

compensation should be targeted at the median. Targeting the median compensation will also have the effect of lessening the impact of “outliers” in the peer group – both on the high and low side – from having a significant effect on determining the appropriate compensation level.

- **Reflective of the special nature of the Smithsonian.** Working at the Smithsonian is a privilege. Serving as its Secretary is an honor. If a candidate for the Secretary position cannot be hired without offering compensation that pushes the limits of reasonableness, he or she is not the right person for this position, regardless of qualifications.
- **Direct.** As with other Smithsonian employees, the Secretary should be compensated through salary, pension, and health benefits alone. As is the practice in some nonprofits, the Board may want to provide some additional pension benefit beyond the level capped by IRS regulations. But unless a housing supplement is required to compensate the new Secretary for moving from a location with a much lower cost of living than that of Washington, D.C., there is no need for a housing allowance. And if a housing supplement is provided, its purpose should be transparent – it should not be justified as reimbursement for entertaining potential donors.
- **Limited Perquisites.** The Secretary should be given no special travel privileges, or any other perquisites or benefits that are not available to other executives of the Smithsonian, except where the Board makes a determination in advance that such perquisites and benefits are reasonable and appropriate.

4. **The Smithsonian’s Policies Should Be Consistent With Federal Regulations and its Salary Schedule Should Be Consistent With Government Salary Schedules**

The Committee is concerned about the tendency of the Institution to embrace those federal regulations it finds convenient while ignoring others. For example, the Smithsonian sometimes denies requests filed under FOIA on the ground that it is not a federal entity, while, at other times, it grants FOIA requests. The IRC recommends that the Smithsonian affirmatively adopt policies to promote openness, transparency and effective governance consistent with federal regulations, such as FOIA, the Privacy Act of 1974, Chief Financial Officer Act of 1990, the Sunshine Act, personal financial disclosure requirements, the Ethics in Government Act and



conflict of interest rules. If the Smithsonian does not so act, Congress should consider appropriate legislation.

At the Smithsonian, some employees are paid using government salary schedules while others are paid from the Smithsonian trust. A further complication is that federal Smithsonian employees are prohibited from earning compensation greater than that provided by the federal General Schedule, which currently caps the salary of Senior Level/Senior Technical employees at \$154,600 per year (exclusive of bonuses), lower than federal SES employees in federal agencies who can earn up to \$168,000 (exclusive of bonuses). Apparently, this regulation is the result of a determination by the Office of Personnel Management that, since the Smithsonian is not a federal agency and since the SES compensation schedule applies by law only to federal agencies, the higher SES pay levels are not available to Smithsonian employees. The IRC recommends that the Smithsonian adjust its salary structure to pay employees up to the maximum of the SES schedule where appropriate, with Congressional approval if necessary.

In recent years, some employees have been moved out of the federal general schedule pay system and rehired by the trust at much higher salaries. Smithsonian management has argued that since trust employees serve at the pleasure of the Secretary (and thus do not have the employment protections that employees paid by the federal schedule enjoy), their compensation should be higher. This has often resulted in paying salaries for some positions (in areas such as finance and government relations) that are unnecessarily higher than those paid in much larger federal agencies. This can only cause morale issues. Allowing use of the SES pay scales would help alleviate this problem.

The Committee recommends that the Smithsonian provide employee compensation and benefits as follows:

- The salary structure would align with that provided to federal employees, with pay and bonus opportunity similar to the federal structure from the entry level through the Senior Executive Service.
- All Smithsonian employees would be covered by similar health benefits, retirement benefits, and time off policies as federal employees, with these benefits adjusted accordingly whenever changes were made in the corresponding federal programs.
- The Smithsonian would be permitted to pay salaries above the maximum limits in the federal program for those filling certain positions. In addition to the Secretary, this could include such positions as the undersecretaries, museum directors, top scientists, and others where independent compensation analyses indicate that median pay in comparable nonprofit organizations is materially higher than existing maximum federal salaries.
- A limit should be placed on the number of Smithsonian employees that can exceed the federal maximums – perhaps 40 to 50 – with the understanding that this limit could be increased as the Institution grows, or to reflect unusual increases in competition for key personnel. Approval by the Regents should be required for a position to be paid above the federal ceiling.
- Those employees in positions paid above the federal ceilings serve at the pleasure of the Secretary (or the Regents, in the case of the Secretary).

Whether the Regents accept the recommendations above, the Institution must harmonize compensation and benefit programs throughout the Institution. The Board of Regents should address compensation in the following ways:

- The Compensation Committee should be independent, both in fact and perception, from the Secretary. The Secretary should not be a member of this Committee, and there should be no current or past interlocking relationships between the Secretary and any Committee member.
- The Compensation Committee should formally review all elements of compensation for Smithsonian senior management positions at least annually.
- Any changes in the Secretary's compensation and benefits should be reviewed and approved by the full Board of Regents, not just the Compensation Committee or the Executive Committee.

- Any compensation consultant hired to evaluate management compensation at the Smithsonian should be retained by and report directly to the Compensation Committee (or the full Board of Regents). To be effective, the consultant will also have to work with management, but the contract should be with the Regents, and important decisions on compensation philosophy and peer group selection should be made in conjunction with the Regents.
- At least every other year, an independent qualified compensation expert should be asked by the Regents to provide an opinion on the reasonableness<sup>99</sup> of the Secretary's total compensation package. This opinion should be made public.
- Transparency should be a guiding principle. Decisions on compensation for Smithsonian executives should be made with the expectation that they will generally appear reasonable to reasonable observers, including donors and federal oversight committees.

**5. The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight**

The Board of a nonprofit organization must “oversee the operations of the organization in such manner as will assure effective and ethical management.”<sup>100</sup> The Board is charged with overseeing the management of the Smithsonian, while the Secretary's responsibility is to run its operations.<sup>101</sup> As part of its governance role, the Board must provide oversight of operations, set strategy and monitor the implementation of the strategic plans. This relationship between the

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<sup>99</sup> In accordance with the IRS “Intermediate Sanctions” regulations.

<sup>100</sup> American Bar Association, ABA Coordinating Committee on Nonprofit Governance, *Guide to Corporate Governance in the Wake of Sarbanes-Oxley* 17, 19 (2005).

<sup>101</sup> See, e.g., BoardSource, *The Source: Twelve Principles of Governance That Power Exceptional Boards* Principle 1 (2005) (“Nonprofit boards have primary legal responsibility for governance - the exercise and assignment of power and authority - of their organizations. Boards reserve to themselves organizational oversight and policy setting, and delegate to the chief executive responsibility for managing operations and resources.”).

Board and the Secretary is a “constructive partnership” in which the Board sets strategic plans and then delegates operations to the Secretary.<sup>102</sup>

Experts in the area of nonprofit governance have identified a series of functions that form the core of a nonprofit Board’s responsibilities and that the IRC believes apply well to the Smithsonian:

- determining the organization’s mission;
- reviewing and monitoring implementation of strategic plans;
- selecting, compensating and evaluating the organization’s chief executive;
- evaluating the performance and establishing the compensation of the senior leadership team;
- planning for management development and succession;
- overseeing the integrity and reliability of the organization’s finances;
- overseeing management in its operation of the organization and its programs;
- overseeing legal and ethical compliance; and
- identifying, cultivating and soliciting donor support for the organization.<sup>103</sup>

In light of the demands these responsibilities place on directors in the post-Sarbanes-Oxley governance environment, the IRC believes the Smithsonian should consider, as the Office of the Vice President suggested to the IRC, “what if any changes . . . the Institution [should] seek with respect to the existence, composition, selection or functions of the Board of Regents.”<sup>104</sup> The time commitment necessary to fulfill the fiduciary responsibility placed on

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<sup>102</sup> BoardSource, *The Source: Twelve Principles of Governance That Power Exceptional Boards* Principle 1 (2005).

<sup>103</sup> See, e.g., BoardSource, *The Source: Twelve Principles of Governance That Power Exceptional Boards* (2005).

<sup>104</sup> Letter from David Addington, Chief of Staff to the Vice President, to Charles A. Bowsher dated May 18, 2007, attached as Exhibit 1.

the directors of an organization as large and complex as the Smithsonian is significant. In light of the demanding nature of the jobs of the modern Vice President and Chief Justice, the IRC has serious doubts that individuals in these positions will have the time, attention and qualified staff necessary to fulfill their fiduciary duties.

The IRC believes the Smithsonian could preserve its unique historical structure, yet at the same time, address the pressing need for active oversight, through the establishment of a Governing Board that would take on the fiduciary responsibility for overseeing the operations and management of Smithsonian. The IRC recommends that the Governing Board meet no less frequently than every other month. The Governing Board should, as the current Board does, also govern through active committees, particularly through the Audit and Review, Human Resources and Compensation and Nominating and Governance Committees. The Governing Board would consist of all Regents except the Chief Justice and Vice President. Service as a Regent must require that all members of the Governing Board, including members of Congress, be willing and able to assume a role with clear fiduciary responsibilities and to devote the time necessary to carry out those duties personally.

The establishment of a Governing Board would formalize the Smithsonian's informal governance structure under which the "Committee of the Whole" meets in advance of the Board of Regents meeting, while the Board of Regents meetings that follow, in contrast, have been formal proceedings to approve what had been decided by the Committee of the Whole.

The Governing Board would have a Chairman who should handle day-to-day issues requiring the attention of the Board and preside over initial meetings of the Board, where all actionable items would be discussed and debated and reports from, for example, the Inspector

General, Chief Financial Officer, General Counsel, Ethics Officer and museum and scientific project leaders, and others would be received. The Chairman's duties would include:

- Communicating to the Secretary the policies and programs adopted or approved by the Board.
- Reporting to the Board the conduct and management of the affairs of the Smithsonian.
- Chairing and presiding over the Governing Board.
- Communicating with the Chancellor regarding Smithsonian matters.

The Governing Board should reserve, at every meeting, time for an executive session where issues involving management, including the Secretary's performance, can be freely and openly discussed without the presence of employees.

The IRC also recommends that the Executive Committee be enlarged to five members, and its activity limited in practice to handling routine affairs of the Board between meetings and when special meetings, either in person or telephonically, can not be arranged. All actions of the Executive Committee should be presented to the Governing Board for review.

**6. The Role of the Chief Justice and Vice President Should Be Clarified**

Historically, the Chief Justice has been elected to serve as the Chancellor. Under the IRC's proposal, the Chief Justice, while not on the Governing Board, would continue to serve as Chancellor. In that role, the Chancellor would preside over the second portion of the Governing Board meeting where discussion and formal votes would be taken on those issues requiring action of the Board of Regents. Only those Regents who serve on the Governing Board, however, would vote. The IRC recommends such a unique structure because it believes the historic role played by the Chief Justice in governance of the Smithsonian should not lightly be

discarded and because the Chief Justice has made it clear he wishes to remain associated with the Institution.

The Committee also believes, however, that if governance of the Smithsonian is to be updated, it will require a commitment of time on the part of every Regent that far surpasses that which has been expected in the past. The Committee believes that it is not feasible to expect the Chief Justice to devote the hours necessary to service as a fiduciary Regent. The Committee also questions if it is appropriate and necessary for the Chief Justice to have fiduciary obligations to a separate entity, even if that entity is closely linked the government, and to assume the legal and reputational risks associated with being a fiduciary.

The same situation applies to the Vice President. Under the IRC's proposal, the Vice President would continue to serve as a Regent in a non-fiduciary capacity, and would chair meetings of the Board in the absence of the Chief Justice. If neither the Chief Justice nor the Vice President were present at a meeting of the Board, the Chairman would preside.

If the Smithsonian desires to have positions for individuals that honor them for their contributions to the arts and sciences, including their financial generosity, it should establish nonfiduciary advisory boards for the Institution in general as well as for its various museums and divisions. The National Board, now primarily a development group, could have its scope expanded. The formerly active, but now moribund Smithsonian Council could be revived to bring together distinguished scientists, academics, and museum directors to advise the Smithsonian and its constituent parts on programs, policy, and long range planning. Having both a vibrant Board and Council should help curb the extensive criticism the Smithsonian received during recent years regarding the conditions on certain donations and the scope and content of certain shows and displays.

**7. Congressional Regents Should Accept Fiduciary Responsibilities**

A clear understanding needs to be reached regarding the role of the Congressional Regents. Service as a Regent must require that all members of the Governing Board be willing and able to assume a role with clear fiduciary responsibilities and to devote the time necessary to carry out those duties personally. So that there will be neither an actual nor an appearance of conflict of interest, the IRC believes that any Congressional Regent who serves on one of the Congressional authorizing or appropriations committees with authority over the Smithsonian should recuse himself or herself from votes in Congress involving Smithsonian financial matters.

**8. The Board Should be Expanded or Reorganized to Allow for the Addition of Regents with Needed Expertise**

The Board must expand the level of expertise among the Regents on key issues, especially financial controls and facilities and museum management, and ensure that the Regents who are appointed have sufficient time and attention to dedicate to the Smithsonian.

While a larger board may be necessary to ensure the range of perspectives and expertise required for some organizations or to share fundraising responsibilities, some experts believe that effective governance is best achieved by a smaller board with more active participation from each member.<sup>105</sup> To achieve this expansion of current expertise and ensure that Regents are active and engaged, the Committee recommends the Regents consider the following: (1) if current Regents have sufficient time and interest in continuing to serve; (2) adding to Board Committees – such as Audit and Review, Governance and Compensation and Human Resources – non-Regent members with special expertise; (3) employing outside experts to advise the Board

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<sup>105</sup> See American Bar Association, ABA Coordinating Committee on Nonprofit Governance, *Guide to Corporate Governance in the Wake of Sarbanes-Oxley* 21 (2005); Discussion Draft, U.S. Senate Finance Committee, at 13 (2004) (suggesting that the size of nonprofit boards be set at “no less than three members and no more than fifteen”).



and its Committees in specific subject areas; and (4) increasing the total number of citizen Regents from 9 to 11 by either adding two additional citizen Regents or reducing the number of Congressional Regents from six to four – two from the House and two from the Senate.

To make sure that the Smithsonian Board is made up of individuals capable of providing the necessary expertise, the Regents should move to a nominating process that allows for a broader field of candidates. In looking at candidates, those charged with picking future Regents should note the necessity for expertise in financial controls, investment strategies, audit functions, governance, compensation, and facilities management, as well as an interest in and a devotion to the arts and sciences. Contributions to the Smithsonian should not be the determining factor for service on the Board, but only one of many factors considered in the selection of Regents. Care should be taken to avoid appointing Regents who have clear personal and professional ties to the Secretary that may compromise the Board's independence.

**9. Internal Financial Controls, Audit Functions and the Role of the General Counsel and Inspector General Must Be Strengthened**

The Smithsonian's system of internal controls and audit needs to be strengthened through additional resources, adoption of best practices and retention of personnel with substantial experience in the financial and audit area. In February 2007, KPMG identified the inadequacy of the Smithsonian's accounting staffing and resources as a "reportable condition." The Committee understands that the Smithsonian is in the process of selecting an outside auditor, and the Committee recommends that the Smithsonian expeditiously implement the recommendations of this auditor, as well as those recommendations contained in prior management letters.

Corporate governance principles require that the general counsel of an organization be the gatekeeper of information for the Board and a guardian of the Board's independence. The

General Counsel of the Smithsonian has been hindered from playing this role due to lack of regular, direct access to the Board. The Committee recommends that (1) the Smithsonian provide the General Counsel's office and Office of the Inspector General with the necessary tools and resources to perform their gatekeeper and guardian functions, (2) the General Counsel serve as the Smithsonian's corporate secretary and (3) the Smithsonian ensure vigorous compliance with the Inspector General Act.

**10. Smithsonian Executives Should be Permitted to Participate in Only Nonprofit Board Activities Subject to Prior Approval**

Generally, the Smithsonian has been careful in monitoring the outside work of its employees. The exceptions have been Mr. Small and the Deputy Secretary, both of whom have been allowed to collect significant compensation for service on the boards of for-profit corporations. As discussed above, these outside commitments have taken these individuals away from the Smithsonian during working hours for significant periods of time. The Board must develop a uniform policy on outside work. The IRC acknowledges that there are arguments for allowing an organization's senior executives to serve on the boards of for-profit corporations. The benefits of doing so, however, accrue primarily to the individual and only secondarily to the organization. Accordingly, the IRC recommends that the Board prohibit its executives from serving on the boards of for-profit corporations.

With respect to nonprofit boards, the Regents should control and require prior approval of any outside activities, including service on any other nonprofit or professional service boards and teaching and lecturing obligations, weighing carefully the time commitments needed and the benefits to the Smithsonian. Any compensation received by any Smithsonian employee for

service on any outside board or organization should not be kept by the individual, but should be turned over to the Smithsonian for the benefit of the Institution.

**11. The Selection of the Next Secretary Must Reflect the Governance Challenges Facing the Smithsonian**

Being Secretary is a difficult and time consuming job. The Secretary oversees a complex amalgam of museums, research centers, a zoo, retail shops, restaurants and buildings. The Secretary is the caretaker for one of the great names in the science and arts. It is also a job with great challenges, prestige, and opportunities to have a lasting mark on our national heritage.

Business skills are valuable to the Smithsonian and efforts to introduce business planning and measurement tools should be applauded. But what must be avoided in picking the next Secretary is the manner in which Mr. Small operated. The Secretary must work for the Board. The Secretary must set the ethical tone, not sidestep it. The operations of the Smithsonian, especially the Secretary's office, should be open and transparent.

The Board will be well served, when picking the next Secretary, if it follows the words of former Secretary Michael Heyman: "This new era also demands from public (as well as private) organizations increased fiscal accountability. We must use our resources efficiently and intelligently both to husband them and to underscore our credibility to those who provide them – the government and our donors."<sup>106</sup>

**12. Achieving Effective Oversight and Governance at Nonprofit Organizations May Ultimately Require Legislative Action**

Unfortunately, the problems at the Smithsonian are not unique. As the media and Congressional oversight committees have made clear, there have been similar problems at

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<sup>106</sup> I. Michael Heyman, Installation Address, September 19, 1994. (available at <http://www.150.si.edu/chap13/install.htm>), attached as Exhibit 41.

several large tax-exempt organizations, including major museums and universities, not to mention the income and expense excesses and governance issues at for-profit companies. This raises the issue of effective management of nonprofits and how governance at these entities should be structured, the responsibilities of their boards of directors and trustees, and how oversight of these organizations should be provided. The IRC believes that boards of nonprofits – especially large nonprofits – should move to reform their governance structures to bring them into line with best practices that have been well documented. These include the financial management and audit requirements in the Sarbanes-Oxley legislation, as well the recent Securities and Exchange Commission requirements for more transparent disclosure of the total compensation of senior executives. Some nonprofits have made progress in these areas, while others have not. Failure to take voluntary action will likely lead, ultimately, to action by Congress, state legislatures, and the courts, to impose reforms from without, just as it did in the case of the corporate world.

**A REPORT TO THE BOARD OF REGENTS OF  
THE SMITHSONIAN INSTITUTION**

**EXHIBITS**

**June 18, 2007**

# EXHIBIT 1



OFFICE OF THE VICE PRESIDENT  
WASHINGTON

May 18, 2007

The Honorable Charles A. Bowsher  
Chairman, Independent Review Committee  
Smithsonian Institution  
4503 Boxwood Road  
Bethesda, Maryland 20816

Dear Mr. Bowsher:

Thank you for your letter of April 30, 2007 advising that the Smithsonian Institution Board of Regents has asked your Committee to conduct an independent examination of the Secretary's compensation and expenses and related Smithsonian governance. Your letter indicated that you would welcome any recommendations that the Office of the Vice President might have for improving the governance of the Smithsonian Institution. The Smithsonian Institution is one of the finest educational institutions in the Nation, cherished by Americans; the Committee's primary objective should be to ensure that, consistent with the law, it remains so.

The law constitutes the Smithsonian Institution an "establishment . . . for the increase and diffusion of knowledge" (20 U.S.C. 41) and puts its business in the hands of a Board of Regents consisting of eight very senior Federal officials and of nine other persons appointed by enactment of laws (20 U.S.C. 42). The nature of the "establishment" is somewhat unclear in the law; in some respects the law treats the Institution like a government entity and in other respects the law treats it like a private entity. The Institution receives and uses both appropriated funds and non-appropriated funds. The Institution has employees who are treated as employees of the United States and employees who are not.

According to the courts, the Institution is part of the United States, but it is not part of the executive branch. See, for example, Dong v. Smithsonian Institution, 125 F. 3d 877, 879 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 977 (1998) ("It is plain that the Smithsonian is not an establishment in the executive branch."); O'Rourke v. Smithsonian Institution Press, 399 F. 3d 113 (2d Cir. 2005), *cert. denied*, 126 S. Ct. 338 (2002) (Institution is part of "the United States" for purposes of U.S. Court of Federal Claims exclusive statutory jurisdiction over suits for copyright infringement by the United States). The Office of Legal Counsel of the Department of Justice, in an opinion dated April 25, 1997, stated its view "that the unique, hybrid nature of the Smithsonian requires that its legal or governmental status must be assessed from the particular standpoint of the constitutional, statutory or regulatory scheme in which questions arise and that broad generalizations regarding the Smithsonian's status are inappropriate."

The Committee may wish to consider the following questions in the course of the Committee's work:

Legal Nature. What aspects of the complex legal nature of the Institution benefit the Institution, what aspects of it burden the Institution, and what if any changes to it should the Institution seek? Should the Institution seek to become in its entirety a government agency, should the Institution seek to become in its entirety a private non-profit educational institution, or should it continue to have both government-like and private-like aspects co-existing in the same Institution?

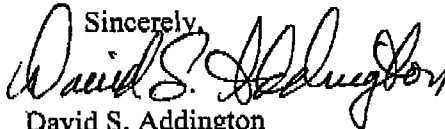
Management Practices: Public or Private or Both. Should the Institution adjust some or all of its management practices to be more like those of a government agency? Should the Institution adjust some or all of its management practices to be more like those of a private non-profit educational institution? Can the Institution currently manage effectively and without confusion or error the co-existence of both government-like and private-like practices within the Institution and, if not, what changes should the Institution make in its training, standards of conduct, and management practices to achieve that objective?

Board of Regents. Does the presence of eight senior Federal officials on the Board of Regents (Vice President, Chief Justice, three Senators, and three Representatives) benefit or burden the Institution? Does the selection process for the non-Federal regents (i.e., appointment by passage of a law) benefit or burden the Institution? What if any changes should the Institution seek with respect to the existence, composition, selection or functions of the Board of Regents?

Management and Accounting for Resources. Are the Institution's budgeting and accounting functions, and associated management controls, well-designed to ensure the lawful and effective use of the Institution's appropriated funds, non-appropriated funds, and property? If not, what changes should the Institution make?

Prime Resource: Talented People. Are the Institution's arrangements for personnel hiring, training, management, and compensation well-designed to attract and retain the talented, experienced employees the Institution needs? If not, what changes should the Institution make?

The Office of the Vice President appreciates the opportunity to assist in identifying issues that the Committee may wish to address. The Committee's dedication to ensuring that the Smithsonian remains one of the Nation's premier institutions "for the increase and diffusion of knowledge" is respected and appreciated.

Sincerely,  
  
David S. Addington  
Chief of Staff to the Vice President



# EXHIBIT 2



# Smithsonian Business Ventures

Gary Beer  
Chief Executive Officer

Memo

Date: June 14, 2007

To: Stephen Sorensen  
Williams & Connolly LLP  
725 12<sup>th</sup> Street, NW  
Washington, DC 20005

From: Gary Beer

Subject: Independent Review Committee

I have not been asked to review the draft report or been privy to its contents and it has been my understanding that the Committee's work did not include matters related to SBV. I recently attended a staff briefing where some of the general themes were discussed and the Acting Secretary has asked me to consult in preparing a response on behalf of the Institution to a Committee inquiry regarding historical SBV performance, which we are pleased to provide.

I am confident that a critical analysis of both market conditions and business results under SBV stewardship demonstrates a clear record of stable growth in the Smithsonian's core business, despite a cataclysmic decline in museum visitation since 9/11, and very significant long-term opportunity that has been created by new businesses that SBV has established, and without financial risk to the Institution. If on receipt of the Institution's response concerning SBV revenue and profit growth, there are further questions, I would welcome the opportunity to address them. In the interim, I have attached for the Committee a copy of a recent memorandum which was provided to the Governance Committee of the Board of Regents regarding the mandate of Smithsonian Business Ventures.



# Smithsonian Business Ventures

Gary Beer  
Chief Executive Officer

Memo

Date: May 1, 2007  
To: Regents Sant, Spoon, and Stonesifer; and Acting Secretary Samper  
Cc: John Huerta, Sheila Burke  
From: Gary Beer  
Subject: Smithsonian Business Ventures' mandate

On Friday, I received a communication from General Counsel John Huerta apprising me that the Governance Committee would be requesting supporting rationale for the human resources and compensation, finance and accounting, capital investment, and IT systems of Smithsonian Business Ventures (SBV), which are operated separately or differently from the central administration of the Institution. We will work to develop documentation expeditiously to support your analysis of this issue. I am writing to provide some important context for you to have as the Regents and the Acting Secretary explore the question noted above and other fundamental questions pertaining to SBV that arise.

## Current Environment

As you well know, along with the recent change in leadership, there have been many questions raised about the appropriate balance of public and private sectors. The Regents and the Acting Secretary need to be aware that the last year of scrutiny on SBV has created considerable instability in the SBV management organization and there is increasing business risk in the current operating environment. Over the past year, SBV management has responded to a major GAO investigation of the Showtime agreement, and a large scale internal audit of executive compensation. Neither of these inquiries identified any wrongdoing or material business deficiency. Notwithstanding, the internal audits and inquiries continue and the legitimacy of the reasonable non-profit business practices employed by SBV remains implicitly in question.

This material instability at SBV could impair what are today a set of operating business units producing \$170 million in revenue and projected to provide \$25 million in unrestricted funds to the Institution. Uncertainty about the future of business operations at the Institution has become an obstacle for retention and recruitment of management and in some areas there are challenges in conducting day-to-day business. Long-term new initiatives for growth are nearly impossible in the current environment.

## Going Forward

I believe that the Governance Committee and the Regents should very promptly address the core question of whether the Smithsonian is prepared to operate in the commercial marketplace, and determine whether the current Regents still hold the view that a unit driven by professional business managers and operating with a business culture, systems and practices continues to be the right approach. Only when those questions are answered can

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Washington DC 20560-0038  
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202-786-9147 Fax

essential details, such as choosing between alternative systems or policies, be sensibly assessed.

When I was recruited to the Institution in 1999 by Secretary Heyman and Wes Williams to organize Smithsonian Business Ventures, my mandate was to establish business practices to improve existing operations and create an entrepreneurial organization to develop new business. While SBV was not conceived as a separate entity, the Regents clearly intended to have SBV operate as an accountable business enterprise, and authorized the Secretary to recruit professional managers from the marketplace, establish a Board of Directors, and create financial and management systems customary in the private sector.

If these questions from the Governance Committee are to be simply about tactics and execution instead of questions of the fundamental mandate and principles of SBV, then a statement from the Regents supporting the original mandate would be invaluable to maintaining stability. If the mandate itself is in question, then we should begin immediately to address the retention issues associated with such a change and begin to set new business goals going forward; allowing for proper financial and organizational transition plans to be put into place. The alternative is to risk financial losses that may occur if these businesses do not have adequate management in place, or the ability to compete in the marketplaces in which they operate.

There are immediate issues as well that need to be considered. The Acting Secretary is keenly aware of the shortfalls of current Institutional policy for revenue sharing of museum business income and efforts to address this problem are long overdue. The current initiative to evaluate the outsourcing of museum retail stores has overshadowed that dilemma and is a critical decision concerning the Institution's core business that warrants the consideration of the Regents. In addition, we have expressed to the Secretary that compliance with FOIA will have a significant dampening effect on Smithsonian business activity, current and future, that needs to be addressed.

The external members of the SBV Advisory Board are a small group of talented business professionals that have shown significant dedication and commitment to the success of SBV and have been very helpful to me. I believe the SBV Advisory Board has found itself increasingly stretched to cope with the myriad challenges from outside and inside the Institution that are either beyond their authority as an advisory group or are matters of public policy outside the purview of business decision-making. The questions expected to come from the Governance Committee will, rightly or wrongly, be interpreted by our staff and Board as further question marks regarding SBV's mandate and mission.

I know that the SBV Board of Directors would join me in expressing support for a re-assessment by the Regents and our commitment to supporting Acting Secretary Samper to effect the best possible outcome for the Institution. The next meeting of the SBV Board of Directors will be on May 14, and I hope that a dialogue with the Secretary and the Regents can be accommodated at that time.

I appreciate your consideration and look forward to discussing these issues with you.

# EXHIBIT 3



Smithsonian  
Institution

## SMITHSONIAN DIRECTIVE 150

April 16, 1996

# SMITHSONIAN INSTITUTION ORIGINS, GOVERNANCE, AND RELATIONSHIP TO THE FEDERAL GOVERNMENT

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Background

History

Board of Regents

Responsibilities of the Regents as Trustees

Institutional Relationship to the Federal Government

Stewardship

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### **Background**

Unique within the Federal establishment, the Smithsonian Institution is a charitable trust with a statutory charter approved by Congress and the President in 1846. How this public trust came to be created by the Government, yet without the function of governing, is a story told against the backdrop of more than a century and a half of the Nation's history and shaped by standards imposed by law on those who manage charitable trusts. Those standards guide every Smithsonian activity, whether its interaction with the Congress, the management of its resources, or its relationships with the myriad of constituencies surrounding it.

The relationship of the Smithsonian Institution to the Government of the United States is, at first glance, familiar and, indeed, conventional. That relationship and the processes devolving from it have many ramifications for the Institution and a profound effect on its operations, requiring, among much else, that the Smithsonian justify extensively its policies and plans to the Congress and to the Administration.

An examination of the nature of the Smithsonian and its development reveals that those ramifications are elements -- and not the entire story -- of a complex Institution that is neither an agency of the Government nor even within the Executive Branch. Neither, as some may believe, are there two Smithsonians -- one Federal and one Trust -- nor is the Institution a hybrid, having a Federal side and a Trust side and changing identity to suit its advantage.

## History

The Institution originated in the mind of James Smithson, an English scientist who died in 1829. He had never visited the United States, but apparently had great faith in this country because in his will he provided that:

*In the case of the death of my ... nephew without leaving a child [which occurred] ... I then bequeath the whole of my property ... to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase and diffusion of knowledge among men.*

In essence, the Smithson will named the United States as trustee of a sizeable sum of money if the United States would agree to establish the Institution and administer it as a research and educational organization to benefit all of mankind, not just the people of the United States. The Smithson bequest amounted to more than half a million dollars, a magnificent sum in the early 1800s, and the matter was taken very seriously by the Government. In 1835, President Jackson wrote to Congress:

*The Executive having no authority to take any steps for accepting the trust and obtaining the funds, the papers ... are communicated ...*

*with a view of such measures as  
Congress may deem necessary.*

By the Act of July 1, 1836, Congress accepted the trust and pledged the faith of the United States that all monies received for the trust would be separately accounted for, applied to the establishment of the Institution for the purposes set forth by Mr. Smithson, and serve the beneficiaries he named. Writing as chairman of the Select Committee of the House of Representatives that prepared the 1836 legislation, John Quincy Adams observed:

*It is, then, a high and solemn trust which the testator has committed to the United States of America, and its execution devolves upon their Representatives in Congress duties of no ordinary importance.*

*In the commission of every trust, there is implied tribute of the soul to the integrity and intelligence of the trustees; and there is also an implied call for the faithful exercise of those properties to the fulfillment of the purpose of the trust.*

*Your Committee are fully persuaded, therefore, that ... the Congress of the United States, in accepting the bequest, will feel in all its power and plenitude the obligation of responding to the confidence reposed by him, with all the fidelity, disinterestedness and perseverance of exertion which may carry into effective execution the noble purpose of an endowment for the increase and diffusion of knowledge among men.*



Ten years elapsed as Congress debated the form that the Smithsonian should take. The Act of August 10, 1846, provided the basic charter for the Institution as it exists today and vested authority for management of the Smithsonian in a Board of Regents.

## **Board of Regents**

Members of the Board of Regents are drawn from all three branches of Government, as well as from the private sector. They include the Chief Justice of the United States, the Vice President, three members of the Senate, three members of the House of Representatives, and nine citizens.

The Board of Regents bears the responsibility of the United States as trustee for carrying out the Smithsonian bequest and the public trust for which it provided. The primary obligation of the Board of Regents is to manage the resources of the Institution for the benefit of all of mankind.

## **Responsibilities of the Regents as Trustees**

The responsibilities imposed on a trustee have their roots in English common law. A trust is a fiduciary relationship whereby a trustee holds and administers property for stated purposes on behalf of named beneficiaries. A trustee who holds legal title to trust property can use that property only in accordance with trust purposes to serve trust beneficiaries. In addition, a trustee must exercise prudent oversight of trust assets, keep strict accounts, make every effort to further trust purposes, and account for stewardship of the trust to all proper authorities.

These obligations were well understood by the Congress in 1836 as it considered acceptance of the Smithsonian bequest and in 1846 as it created the Institution. In assuming responsibility for the Smithsonian trust, Congress acknowledged that its management had to be separated from the functions of Government and that

Smithsonian assets had to be devoted solely to trust purposes and accounted for separately from those of the Government.

The charter of the Smithsonian reflects those commitments. The Board of Regents benefits from representation from all three branches of Government, yet the Institution is not part of any branch. If it were, the composition of its Board of Regents and their method of appointment would be inconsistent with provisions of the U.S. Constitution.

The Board of Regents alone is responsible for setting Institution policy and for overseeing the management of Smithsonian assets: the collections, the buildings of the Institution, and the funds available to it. With this independence, however, come the obligations imposed by law on all trustees: to exercise good judgment in carrying out trust purposes, to be faithful to the trust and its beneficiaries, to exercise prudent oversight of trust activities, to maintain strict records of trust assets, and to be prepared to justify stewardship to all proper authorities.

**Institutional  
Relationship to  
the Federal  
Government**

From the inception of the trust, the Government was generous in its support. It was deemed appropriate that the United States pay the expenses of securing the Smithson bequest in the English courts and of transporting it to this country so that the trust fund itself would not be diminished. The Smithsonian "Castle" was paid for from the interest that had accrued on the Smithson money between 1838 and 1846. When the Castle was completed and collections then under the control of the Government were accepted for the new Institution, the Government paid the costs of moving and installing the collections, as well as \$4,000

annually for their care.

Over the years these annual payments increased as the Smithsonian grew. For the first thirty years or so, the funds were included in the budget of the Department of the Interior, which reimbursed the Institution. About 1880, however, the Congress, the Secretary of the Smithsonian, and the Secretary of the Interior agreed that it would be more efficient for the money to be appropriated to the Institution, thus beginning the Smithsonian's direct participation in Federal funding processes.

The increasing levels of financial support for the Institution and the additional functions, consistent with and under the general authority of the Board of Regents, that have been approved by the Congress have not in any way altered the trust nature of the Smithsonian or transformed it into an agency of the Government.

## Stewardship

The Institution's activities are supported by funding from a variety of sources: its endowments, which include the original Smithson bequest; gifts; grants and contracts; revenue-producing activities; and Federal appropriations. The source of funds does not alter the responsibilities of the Board of Regents to set policy for and oversee the management of Smithsonian activities and to be accountable for the proper use of those funds.

Responding to the Congress and to the Administration in the course of the Federal budget and appropriations processes is one manifestation of the Smithsonian's compliance with its trust obligation for stewardship and accountability. Another is in the daily extension of activities that increase and diffuse knowledge among the public that

visits the Institution's sites on the Mall and elsewhere and through printed, electronic, and other means to people around the world.

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**CANCELLATION:** None.  
**INQUIRIES:** Office of Planning, Management and Budget (OPMB).  
**RETENTION:** Indefinite. Subject to review for currency 24 months from date of issuance.  
**FILING:** File sequentially with other current directives.  
**COPIES:** Print file or contact OPMB.  
**UPDATED:** 10-22-97.

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# EXHIBIT 4

**Smithsonian Institution**  
*Office of the Secretary*

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Washington, D.C. 20560

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Fax (202) 786-2515

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**MEMORANDUM**

**April 6, 1999**

**TO:** Members of the Executive Committee of the Board of Regents

**FROM:** Jim Hobbins

**SUBJECT:** Compensation of Secretary Heyman

Item #4 of Secretary Heyman's employment agreement with the Executive Committee of the Board of Regents states that,

The Secretary's performance will be reviewed annually by the Executive Committee of the Board of Regents, which will report to the Board of Regents. The Executive Committee may consider increases in salary based on this performance appraisal and consistent with the compensation of the heads of comparable not-for-profit institutions.

The accompanying pages recite the history of adjustments to the Secretary's compensation since 1984 and provide the context of salaries and benefits of selected university presidents and chief executive officers of certain not-for-profit organizations according to a published report and other research. This information is provided to assist the Executive Committee's consideration of a salary adjustment to maintain reasonable parity and reward superior performance.

Three years ago at this time the Executive Committee agreed in principle that we should follow a strategy of increasing the level of the Smithsonian Secretary's compensation to that of comparable organizations over the next several years, so that the compensation level will not be an obstacle in the recruitment of Secretary Heyman's successor in 1999. An ultimate goal of \$300,000 (in 1996 dollars, to be consistent) and reasonable benefits, the Committee thought, would seem to match levels of compensation at some major universities as well as the National Academy of Sciences and the National Gallery of Art.

As in the past, my involvement in this initiative has not been solicited by the Secretary in any way.

IRC7557

### History of Adjustments to the Secretary's Compensation

For Robert McC. Adams (Secretary, 1984-1994)

<u>Date</u>	<u>New Compensation</u>	<u>Effective Date</u>
2/9/84	\$110,000 + 15% deferred	8/15/84
1/3/86	\$120,000 + 10% deferred	9/16/85
1/5/87	\$130,000 + 10% deferred	9/15/86
1/21/88	\$140,000 + 10% deferred	9/14/87
1/18/90	\$150,000 + 10% deferred	1/18/90
1/23/91	\$167,000 + 10% deferred	1/23/91
1/23/92	\$180,000 + 10% deferred	1/23/92
12/13/93	\$200,000 + 10% deferred	1/1/94

Note: In accordance with his 1984 employment agreement with the Executive Committee, Secretary Adams was provided with deferred compensation as noted and a retirement annuity sufficient to pay annually an amount equaling  $.025 \times$  number of years of service  $\times$  final salary (in other words, 25% of final salary after ten years); while he was given other benefits which are standard for Smithsonian staff (such as health and life insurance), he did not receive standard Smithsonian retirement benefits. He was given the use of a Smithsonian-owned and -maintained home.

For I. Michael Heyman (Secretary, 1994-present)

<u>Date</u>	<u>New Compensation</u>	<u>Effective Date</u>
5/25/94	\$200,000	8/14/94
5/6/96	\$230,000	5/6/96
4/24/97	\$260,000	5/1/97
4/23/98	\$280,000	5/1/98

Note: In accordance with his 1994 employment agreement with the Executive Committee, Secretary Heyman is to be provided with a retirement annuity sufficient to pay annually an amount equaling  $.025 \times$  number of years of service  $\times$  final salary. He receives no deferred compensation. While he is provided other benefits which are standard for Smithsonian staff (such as health and life insurance), he does not receive standard Smithsonian retirement benefits. Unlike his predecessor, he lives in rented quarters and, as he chooses, has been provided neither a house nor a housing allowance by the Smithsonian.

### Comparable Executive Salaries and Benefits

Except as noted, the following figures were gleaned from the September 24, 1998, *Chronicle of Philanthropy* and are indicative of compensation paid in 1996-97, as reported on Internal Revenue Service forms 990. I have added my own calculation of the percentage of change in the total of pay and benefits from the previous year.

<u>Universities</u>	<u>Pay</u>	<u>Benefits</u>	<u>% Change</u>
Columbia University	\$430,000	\$28,457	+14.7%
Cornell University	\$199,580	\$137,175	+5.8%
Duke University	\$315,000	\$26,738	+5.2%
Harvard University	\$270,057	\$28,107	+4.9%
Princeton University	\$341,850	\$39,888	+6.3%
Stanford University	\$357,735	\$40,260	+5.0%
University of California - Berkeley <sup>1</sup>	\$271,400	n/a	+18.0%
University of Michigan <sup>2</sup>	\$287,375	n/a	+4.5%
University of Pennsylvania	\$498,536	\$16,342	+32.9%
University of Southern California	\$337,500	\$41,626	+5.2%
Yale University	\$350,000	\$97,265	+10.4%
 <u>Other Organizations</u>			
American Museum of Natural History	\$379,707	\$18,333	+18.4%
Colonial Williamsburg Foundation	\$264,801	n/a	- 4.9%
Metropolitan Museum of Art	\$271,085	\$27,345	+6.5%
National Gallery of Art <sup>3</sup>	\$344,129	n/a	+5.0%
New York Public Library	\$348,922	\$7,219	+3.4%
U.S. Holocaust Memorial Museum	\$257,892	\$9,500	63.5%
National Academy of Sciences <sup>4</sup>	\$317,400	n/a	+4.0%
Institute of Medicine	\$314,301	n/a	+6.8%
Natl. Academy of Engineering	\$300,000	n/a	+8.3%

The average change in the foregoing subset of organizations was 11.2%, but it should be noted that this list includes compensation adjustments stemming from changes in leadership. If one were to discount the two highest and lowest changes, the average change for 16 members of this group is 8%. An 8% increase in the Secretary's salary would be \$22,400, for a total of \$302,400 per year.

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<sup>1</sup>This is current salary, obtained from the university.

<sup>2</sup>This is current salary, obtained from the university.

<sup>3</sup>This is an estimated current salary, based on the Gallery's General Counsel's estimate of a 5% increase in October, 1998. The Director of the National Gallery of Art is also provided an interest-free mortgage loan of \$1,130,000.

<sup>4</sup>This compensation is current. The President of the National Academy of Sciences is given use of an apartment and a leased automobile. Information provided by the National Academy's Office of Human Services.



# EXHIBIT 5

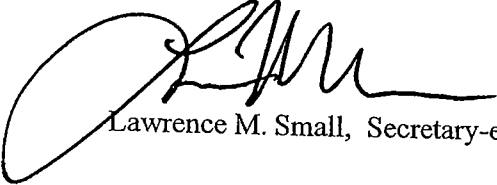
SMITHSONIAN INSTITUTION - EMPLOYMENT AGREEMENT FOR THE SECRETARY

1. The Secretary will serve at the pleasure of the Board of Regents for a presumptive term of ten years, which may be reviewed and extended by the Board annually thereafter.
2. The Secretary will be expected to comply with the Smithsonian's Standards of Conduct and to submit annual statements of financial interests to the Personnel Committee of the Board of Regents.
3. The base salary of the Secretary will be \$330,000 annually as of January 23, 2000. Payment of salary will be made bi-weekly.
4. A total of seventeen percent (17%) of base salary will be paid to the Secretary per annum in lieu of pension. This payment will be made bi-weekly only during the Secretary's term of employment.
5. The Secretary will be entitled to reasonable annual and sick leave. The Secretary may elect medical, dental, life insurance, and other benefits on the same terms as other Trust Fund employees of the Smithsonian.
6. The Secretary's performance will be reviewed annually by the Executive Committee of the Board of Regents, which will communicate that performance review to the Secretary and which will report to the Board of Regents. The Executive Committee may consider increases in salary based on this performance appraisal and consistent with the compensation of the heads of comparable not-for-profit institutions.
7. The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance not to exceed \$150,000 per year in compensation for up to fifty percent (50%) of the actual costs of his housing. Payment of these funds will be made by the Smithsonian to the Secretary monthly upon his presentation monthly of records of housing operating and maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures.
8. The Smithsonian will provide for the Secretary's reimbursement for reasonable costs for official travel and official entertainment, consistent with its policies for such expenditures. The Secretary is authorized to fly first class. The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence is appropriate. The Smithsonian will also provide a suitable car and driver for transportation to local official functions; this is not to include daily commuting between home and work.
9. The Secretary will contribute to the Smithsonian, for the Office of the Secretary discretionary fund, honoraria from his speeches, conference participation and related

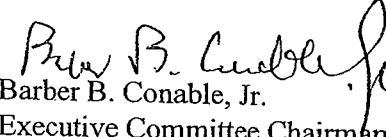
educational and not-for-profit activities. At the same time, it is understood that the Secretary may continue to accept income from service on as many as two corporate boards as long as such service does not interfere with the effective performance of his official duties and does not conflict with the interests of the Institution. Consistent with the Smithsonian's Standards of Conduct, the specific boards on which the Secretary will serve will be approved by the Executive Committee of the Board of Regents and reviewed the General Counsel, who is the Smithsonian's Ethics Officer.

10. This employment agreement may be amended by mutual consent of the Secretary and the Chairman of the Executive Committee of the Board of Regents, which Committee shall report changes to the Board of Regents.

September 28, 1999



Lawrence M. Small, Secretary-elect



Barber B. Conable, Jr.  
Executive Committee Chairman

**Amendment To Employment Agreement Of Secretary of Smithsonian Dated 9/28/99**

**WHEREAS**, on September 28, 1999, the Smithsonian Institution, a trust established by the Congress of the United States in 1846 (the "Smithsonian"), and Lawrence M. Small ("Small"), entered into an employment agreement pursuant to which Small would serve as the chief executive officer, formally known as the Secretary of the Smithsonian Institution; and

**WHEREAS**, Small is currently the Secretary Elect of the Smithsonian and is scheduled to commence his Secretarial duties on January 24, 2000; and

**WHEREAS**, it is essential that the Smithsonian retain and attract as its Secretary the most capable person available; and

**WHEREAS**, both the Smithsonian and Small recognize the increased risk of litigation and other claims being asserted against the Secretary;

**NOW, THEREFORE**, in consideration of the premises above stated and of Small agreeing to serve the Smithsonian as Secretary or, at its request, with other entities, and intending to be legally bound hereby, the parties hereto agree to amend the Employment Agreement of September 28, 1999 ("Indemnification Agreement") as follows:

**1. Indemnification.**

(a) The Smithsonian shall indemnify Small, to the fullest extent permitted by applicable law, if he was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (other than an action by or in the right of the Smithsonian), against expenses (including attorney's fees), judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Smithsonian, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided however that no indemnification shall be made in respect of any claim, issue or matter as to which Small shall have committed intentional, willful or reckless misconduct or gross negligence in the performance of his duty to the Smithsonian unless and only to the extent that a court of competent jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Small is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(b) The termination or abatement of a claim, threatened claim, suit or other proceeding by way of a judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that Small did not meet the standard of conduct described in this section.

**2. Additional Indemnification.** Notwithstanding any other provision of this Indemnification Agreement, if Small has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 1. of this Indemnification Agreement to which he was a party, he shall be indemnified against expenses (including

attorneys' fees) actually and reasonably incurred by him in connection with such action, suit or proceeding.

3. **Procedure.** Any indemnification under this Indemnification Agreement (unless ordered by a court) shall be made by the Smithsonian only as authorized in the specific case upon a determination that indemnification of Small is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 of this Indemnification. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Regents who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Regents so directs, by independent legal counsel in a written opinion. In the event that Small disagrees with a determination under Section 1 as to indemnification by the Regents or the independent legal counsel, such matter may be submitted to binding arbitration for a de novo determination of indemnity according to this Indemnification Agreement pursuant to the procedural rules of the American Arbitration Association.

4. **Advances of Expenses.** Reasonable expenses incurred in defending any threatened, pending or completed civil or criminal action, suit or proceeding shall be paid by the Smithsonian in advance of the final disposition of such action, suit or proceeding, if Small shall undertake to repay such amount in the event that it is ultimately determined, as provided herein, that Small is not entitled to indemnification. Advances of expenses shall be made promptly and, in any event, within 90 days, upon Small's written request. Notwithstanding the foregoing, no advance shall be made by the Smithsonian if a determination is reasonably made at any time by the Board by a majority vote of a quorum of disinterested Regents, or (if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested Regents so directs) by independent legal counsel in a written opinion, that, based upon the facts known to the Board or counsel at the time such determination is made, Small acted in bad faith and in a manner opposed to the best interests of the Smithsonian, or Small intentionally, willfully, recklessly or through gross negligence breached his duty to the Smithsonian, or, with respect to any criminal proceeding, that Small believed or had reasonable cause to believe his conduct was unlawful.

5. **Nonexclusivity and Continued Indemnification.** The indemnification and advancement of expenses provided by this Indemnification Agreement shall not be deemed exclusive of any other rights of Small to which he may be entitled under any insurance or other agreement, vote of Regents or otherwise, both as to actions in his official capacity and as to actions in another capacity while holding the office of Secretary, and shall continue as to Small once he has ceased to be Secretary and shall inure to the benefit of Small's heirs, executors, administrators or legal representatives.

6. **Reliance.** It is hereby expressly recognized that the Secretary has agreed to serve as Secretary of the Smithsonian in reliance on the provisions of this Indemnification Agreement and that the Smithsonian is estopped to contend otherwise. Additionally, it is hereby expressly recognized that any service by the Secretary as a director, trustee, officer or employee of any Smithsonian entity which is a subsidiary or affiliate of the Smithsonian (or other entities controlled by the Smithsonian) is at the request of the Smithsonian and, to the extent permitted by

**Amendment To Employment Agreement Of Secretary of Smithsonian Dated 9/28/99**

H:\WPFILES\indemnification.sec.agr.wpd November 12, 1999 (5:04PM)

law, the Secretary is entitled to indemnification hereunder in connection with such service, including service on any entity by which the Secretary is a an ex officio member, officer or trustee, such as the Woodrow Wilson Center for International Scholars, the John F. Kennedy Center for the Performing Arts or the National Gallery of Art.

7. **Liability Insurance.** To the extent the Smithsonian maintains an insurance policy or policies providing directors' and officers' liability insurance, comprehensive general liability insurance, errors and omissions insurance or coverage for other risks, the Secretary shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Secretary, officer or Regent of the Smithsonian.


8. **Amendments.** No supplement, modification or amendment of this Indemnification Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Indemnification Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

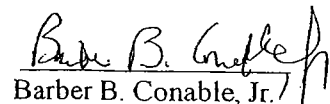
9. **No Duplication of Payments.** The Smithsonian shall not be liable under this Indemnification Agreement to make any payment in connection with any claim made by the Secretary to the extent the Secretary has otherwise actually received payment by or through the Smithsonian (under any insurance policy, bylaw or otherwise) of the amounts otherwise indemnifiable hereunder.

10. **Specific Performance.** The parties recognize that if any provision of this Indemnification Agreement is violated by either the Smithsonian or the Secretary, the other party may be without an adequate remedy at law. Accordingly, in the event of any such violation, the aggrieved party shall be entitled, if it so elects, to institute proceedings, either in law or at equity, to obtain damages, to enforce specific performance, to enjoin such violation, or to obtain any relief or any combination of the foregoing as the aggrieved party may elect to pursue.

11. **Severability and Interpretation.** In case any provision in this Indemnification Agreement shall be determined at any time to be unenforceable in any respect, the other provisions shall not in any way be affected or impaired thereby, and the affected provision shall be given the fullest possible enforcement in the circumstances, it being the intention of the Smithsonian to afford indemnification and advancement of expenses to the Secretary in his capacity as a Secretary or in the other capacities specified above, to the fullest extent permitted by law.

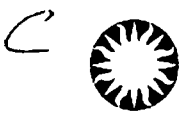
It witness whereof, the parties have signed this Indemnification Agreement on this  
14<sup>TH</sup> day of DECEMBER in the year 1999.

  
Lawrence M. Small  
Secretary Elect

  
Barber B. Conable, Jr.  
Executive Committee Chairman

# EXHIBIT 6

Received 1/19/01 11:20 am  
m.h.



# Smithsonian Institution

Memo

Office of the Secretary

Date January 18, 2001  
To Carolyn Jones, Office of Human Resources  
Ed Knapp, Comptroller  
From Jim Hobbins  
Subject Salary Increase for the Secretary

On January 11, 2001, the Regents' Executive Committee, meeting in its capacity as the Smithsonian's compensation committee, increased Secretary Small's base salary from \$330,000 to \$480,000 effective January 14, 2001.

By the Executive Committee's action on the Secretary's salary, and in accordance with the Regents' retirement provisions for Secretary Emeritus Ripley, Mr. Ripley's annuity should also be raised (it is calculated as 80% of the incumbent Secretary's salary), as should his annual allocation for research support (which is calculated as 20% of the incumbent Secretary's salary). Please put these changes into effect as of January 14, 2001, as well.

I would be pleased to answer any questions you may have. By separate note I will let Mr. Ripley know of these actions.

Smithsonian Institution Building Room 215  
1000 Jefferson Drive SW  
Washington DC 20560-0016  
202.357.1869 Telephone  
202.786.2515 Fax

IRC8912



# EXHIBIT 7

**From:** James M. Hobbins  
**To:** Williams, Wes  
**Date:** 2/12/01 3:59PM  
**Subject:** Draft Memo

Wes,

Following this is at least a starter for you.

Jim

For the Record

**From:** Howard Baker, Chairman of the Regents' Executive Committee

**cc:** William H. Rehnquist  
Wesley S. Williams, Jr.  
Lawrence M. Small  
James M. Hobbins

On January 11, 2001, the Regents' Executive Committee met for the first time, at Secretary Small's suggestion, as a Compensation Committee. Secretary Small observed that the Executive Committee had taken responsibility in the past for setting and adjusting the compensation of the Secretary and had advised and consulted with the Secretary on the compensation of the Under Secretary and occasionally other senior officers. The Executive Committee agreed that it would be prudent to establish the precedent of this meeting as the Compensation Committee to consult with the Secretary on his recommendations for top earners at the Smithsonian and to consider in executive session an adjustment in the Secretary's compensation.

The Secretary made it clear at the outset that he is motivated by the idea that, if the Smithsonian is to be able to recruit superior talent in its senior ranks, the compensation of Smithsonian professionals needs to be competitive in the market. (This rationale was spelled out in a one-page "Smithsonian Institution Executive Compensation Philosophy" that the Secretary provided to the Committee.) Accordingly, as he discussed with this Committee one year ago, he commissioned a study by Towers Perrin to compare compensation of the positions of his senior staff with comparable positions throughout the country. The Secretary's goal is to gain acceptance that Smithsonian senior staff compensation should equate to the 75th percentile of comparable positions in the marketplace.

Turning first to the senior staff, the Secretary presented to the Committee compensation analyses for the top 30 earners. He provided their names, titles, professional backgrounds, and compensation histories since 1998, along with a recitation of the Towers Perrin calculation of the 75th percentile of the Market Rate Comparison. For each individual he provided his recommendation in writing, and he spoke with the Committee about each recommendation based on his observations and, where appropriate, those of his Under Secretaries. His recommendations included either no increase (16 individuals), a high increase of 21.02% of base salary, or increases averaging 9.83% of base salaries for 14 individuals. The Committee endorsed these recommendations for implementation as soon as practicable.

Moving into executive session without the Secretary, the Committee turned its attention to Towers Perrin's analysis of the Secretary's compensation. The Committee noted from detail provided that the Secretary's current compensation, including salary at \$330,000 and benefits at \$56,100 but excluding his \$150,000 housing allowance, totals \$386,100 per year; this could be compared to a Market Rate Comparison at the 75th percentile salary and benefits totaling \$670,835 (again, excluding housing). Back-up analyses of the compensation of research university presidents and the top executives at select not-for-profit organizations was provided and considered by the Committee.

The Committee determined that the Secretary's base salary should be increased by \$150,000 to the level of \$480,000 effective January 14, 2001. This is in recognition of the Secretary's superior performance as well as the prevailing market comparisons. It is also the Committee's understanding that the Secretary will contribute back to the Institution \$100,000 of this increase in 2001 to demonstrate his leadership among members of the Smithsonian National Board and other major donors to the Smithsonian. He is not obligated to commit contributions at this level in subsequent years.

The Committee was of the opinion that the materials provided and the Secretary's recommendations were of first-rate quality. The Committee endorsed and decided on these increases with utmost confidence that the numbers were reliable and proper for our consideration, setting a commendable precedent of superior standards for subsequent years.

# EXHIBIT 8

**From:** James M. Hobbins  
**To:** Williams, Wes  
**Date:** 1/16/01 3:54PM  
**Subject:** Larry's Salary Adjustment

Wes,

I haven't tried this out on Larry, but it is the product of my discussion with John Huerta.

Let me know if it's helpful. I think it's a viable solution if you and Larry find it acceptable.

With thanks and best wishes,

Jim

\*\*\*\*\*

The Executive Committee met in its role as the salary compensation committee of the Board of Regents. The Executive Committee appraised the performance of the Secretary for his first year in office. The Executive Committee was provided a compensation survey prepared by Towers Perrin. The Executive Committee reviewed the compensation survey and noted that the Secretary was appreciably underpaid in comparison to College and University Presidents and other not for profit entities at institutions of similar complexity, size and prestige as the Smithsonian Institution.

In recognition of the superb job the Secretary has done in initiating clear 10 year goals for the Institution, and his progress toward those goals during the first year, the Executive Committee has agreed to increase the base salary of the Secretary from \$330,000 per year to \$380,000 per year. Beyond his base pay, the Regents are providing the Secretary with an additional \$100,000 bonus in recognition of the excess of \$200 million that the Secretary has raised for the Institution, which sum shall not be considered part of the salary of the Secretary. The Secretary has generously indicated that it is his desire to give this sum back to the Institution as part of an exemplary "leadership" donation in order to encourage members of the Board of Regents, the National Board and other advisory boards of the Institution, as well as senior staff to make similar exemplary gifts to the Institution. The Executive Committee noted that total compensation to the Secretary, including salary, bonus and all benefits, places the Secretary in the top 25% of Chief Executive Officers of similarly situated institutions.

# EXHIBIT 9

**Huerta, John**

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**From:** Hobbins, James M.  
**Sent:** Wednesday, January 24, 2007 6:40 PM  
**To:** Huerta, John  
**Subject:** Amending the Secretary's Agreement  
**Attachments:** Amendment to the Secretary.doc

John,

Here's my first draft. I'll look forward to your reactions.

With thanks and best wishes,

Jim

IRC7335

3/28/2007

Amendment to the Secretary's Employment Agreement

The Secretary's employment agreement of September 28, 1999, is amended in two respects:

- (1) Paragraph #7 is amended to say, in its entirety, "The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance supplementing his regular compensation. Payment of this allowance will be made by the Smithsonian to the Secretary on a pro-rata basis in regular bi-weekly compensation distributions. No accounting of actual housing expenses will be required to justify this allowance."
- (2) Paragraph #8 is amended to say, in its entirety, "The Smithsonian will provide for the Secretary's reimbursement for reasonable costs for official travel and official entertainment, consistent with its policies but not limited by them for such expenditures. The Secretary is authorized to fly first class, employ car services when traveling, and stay in suitable accommodations. The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence is appropriate. The Smithsonian will also provide a suitable car and driver for transportation to local official functions, though this is not to include daily commuting between home and work."

Roger W. Sant  
Chairman, Executive Committee  
Board of Regents  
Smithsonian Institution

Lawrence M. Small  
Secretary  
Smithsonian Institution

January 29, 2007



**Huerta, John**

---

**From:** Huerta, John  
**Sent:** Thursday, January 25, 2007 5:03 PM  
**To:** Hobbins, James M.  
**Cc:** Small, Lawrence  
**Subject:** RE: Amending the Secretary's Agreement  
**Attachments:** Panel on the Nonprofit Sector.pdf; Amendment to Small Emp Agreemen-1-25-07b.doc

Jim,

Attached are the revised amendments to the Secretary's employment agreement. As you will see, I dropped a footnote reference to the Panel on the Nonprofit Sector draft standards for travel for nonprofit entities. It is not my intention that the footnote be included in the final amendment. I am including it so that both the Secretary and the Chairman of the Executive Committee are aware of the evolving standards for non-profits in this area of the law. It is important to note that the Internal Revenue Code does not define "lavish" or "extravagant," which means that, in the event of an audit of travel expenses by the Internal Revenue Service (either as a part of a personal audit of the Secretary or an audit of the Smithsonian), the agent would be looking at the travel expenses of other chief executives in the non-profit arena to determine the standard practice. According to the Independent Sector Report on non-profits, first class travel should only be used for specified and pre-approved purposes set forth in the organization's travel policies, such as flights longer than six hours, overnight flights, etc. Absent an exception, the Report advises that board members and executives should make the same arrangements as other employees unless the Board makes a specific finding that first class travel is justified by legitimate business reasons. The risk to the Secretary from routinely incurring first class travel expenses without such a finding by the Board of Regents is that the Internal Revenue Service, in the event of an audit, might conclude that such expenses in the context of a non-profit are lavish and extravagant. In that case, not only would the amount of the expenses over and above what would otherwise be considered reasonable be deemed to be additional compensation to the Secretary (which would result in additional taxes due plus penalties and interest, as well as penalties and interest imposed on the Institution for failing to withhold appropriate taxes), but it is conceivable that the amounts also could be deemed "excess benefit transactions." The consequences of such a finding would be significant not only for the Secretary, who would then have to return the excess payments and pay a sizeable excise tax (25% of the excess benefit), but liability (10% of the excess benefit) might also rest on the person(s) who authorized the payments. In addition, such excess benefit transactions might be required to be reported on the Institution's Form 990T. See IRC 4958.

I am including the Panel on the Nonprofit Sector draft recommendations for your perusal as well.

As always, I will be happy to discuss the draft agreement with you. I am copying the Secretary on this transmittal as I know he will likely be interested in the subject matter and may have questions for me as well.

Best wishes,

John E. Huerta ([huertaj@si.edu](mailto:huertaj@si.edu))  
General Counsel, Smithsonian Institution  
(v) 202-633-5099; (fax) 202-357-4310

IRC7337

3/26/2007

1000 Jefferson Dr. S.W., Suite 302  
Washington, D.C. 20560-0012

Mailing Address:  
Office of General Counsel  
P.O. Box 23286  
Washington, D.C. 20026-3286

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**From:** Hobbins, James M.  
**Sent:** Wednesday, January 24, 2007 6:40 PM  
**To:** Huerta, John  
**Subject:** Amending the Secretary's Agreement

John,

Here's my first draft. I'll look forward to your reactions.

With thanks and best wishes,

Jim

IRC7338

3/26/2007

Amendment to the Secretary's Employment Agreement

The Secretary's employment agreement of September 28, 1999, is amended in two respects:

- (1) Paragraph #7 is amended to provide in its entirety, "The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive an annual housing allowance in the amount of \$ \_\_\_\_\_ for calendar year 2007, which sum may be adjusted in future years as determined in the sole discretion of the Board of Regents. Payment of the housing allowance will be made bi-weekly."
- (2) Paragraph #8 is amended to provide in its entirety, "The Smithsonian will provide for the Secretary's reimbursement for reasonable costs for official travel and official entertainment, consistent with its policies for record keeping, but not limited by them as to the amount of such expenditures. The Secretary is authorized to travel first class, including the use of car services and premium hotel accommodations. The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence serves a business purpose. The Smithsonian will also provide the Secretary a suitable car and driver for transportation to local official functions, though this is not to include daily commuting between home and work."

Roger W. Sant  
Chairman, Executive Committee  
Board of Regents  
Smithsonian Institution

Lawrence M. Small  
Secretary  
Smithsonian Institution

January 29, 2007

# Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

## C. PRINCIPLES FOR STRONG FINANCIAL OVERSIGHT

22. A charitable organization must establish and implement policies that provide clear guidance on its rules for paying or reimbursing expenses incurred when conducting business or traveling on behalf of the organization, including the types of expenses that can be paid for or reimbursed and the documentation required.

### Background:

Public charities and private foundations, like taxable organizations, are permitted to pay for or reimburse ordinary and necessary expenses incurred in carrying out the organization's activities, including the costs of travel. Expenses for transportation, lodging, and meals must be documented to establish that they were incurred in connection with the work of the organization and not the personal activities of the individual. It also requires that these expenses not be "lavish or extravagant under the circumstances," though "lavish" and "extravagant" remain undefined in the tax code or in regulations.<sup>16</sup> Current law generally requires that such payments of travel expenditures for spouses, family members, and others accompanying an individual traveling on behalf of the organization must be treated as taxable income to the individual who is traveling on behalf of the organization.

Special rules apply to many types of travel-related expenses and reimbursement methods, including per diem payments, car allowances, employer-provided vehicles, security expenses, and travel expenses of spouses or other family members.<sup>17</sup> Travel expenses also have specific documentation requirements; for example, proper receipts and an indication of the business purpose of the travel or expenditure must be provided.<sup>18</sup> Taxable organizations also have limitations on deductions for meals, entertainment expenses, and some travel expenses.<sup>19</sup>

Travel expenses that are paid or reimbursed but are not properly documented or are "lavish or extravagant" must be treated as additional taxable compensation to the individual benefiting from them. The law requires public charities intending to treat an expenditure as compensation to provide contemporaneous written substantiation by reporting the amounts on a Form W-2, a Form 1099, or a Form 990, or otherwise documenting such compensation in writing; otherwise, the compensation will be treated automatically as an "excess benefit."<sup>20</sup> Board members and executives of charitable organizations who approve or receive excessive travel benefits are subject to penalties under existing law.<sup>21</sup>

<sup>16</sup> IRC § 162(a)(2); Treas. Reg. §§ 1.162-2, 1.162-17.

<sup>17</sup> Treas. Reg. §§ 1.162-2, 1.132-5.

<sup>18</sup> IRC § 274(d); Treas. Reg. §§ 1.274-5, 1.274-5T.

<sup>19</sup> IRC § 274 and the regulations thereunder.

<sup>20</sup> IRC § 4958(c)(1)(A); Treas. Reg. § 53.4958-4(c)(1).

<sup>21</sup> IRC §§ 4941, 4958.

**Rationale:**

Charitable organizations should establish and implement clear travel policies that reflect the standards of the organization as to what it considers "reasonable" expenditures and that will guide individuals who may incur travel expenditures while conducting the business of the organization. These policies should include procedures for properly documenting expenses incurred and their organizational purpose.

Charitable organizations must not pay for or reimburse travel expenditures (not including de minimis expenses of those attending an activity such as a meal function of the organization) for spouses, dependents, or others who are accompanying individuals conducting business for the organization and who are not themselves conducting business for the organization. If such expenses are paid by the organization, they generally must, by law, be treated as compensation to the individual traveling on behalf of the organization.

While there are occasions on which travel may require the purchase of tickets and accommodations at the last moment and necessitate paying premium prices, as a matter of general practice travel policies should ensure that the business of the organization is carried out in a cost-effective and efficient manner. The same standards for reimbursement of travel expenditures should be applied to the organization's board members, officers, staff, consultants, volunteers, and others traveling on behalf of the organization. Decisions on travel expenditures should be based on how to best further the organization's charitable purposes, rather than on the title or position of the person traveling. As a general practice, charitable funds should not be used for premium<sup>22</sup> or first-class travel. However, boards should retain the flexibility to permit first-class or premium accommodations or travel when it is in the best interest of the organization. Such a policy should be consistently applied and transparent to board members and others associated with the organization. Many organizations have developed policies that allow for such travel if the flight is longer than six hours or if an overnight flight ("red-eye") enables the traveler to sleep during the flight and thereby save time and cost of an overnight stay.

An organization's travel policies should reflect the requirements and restrictions on travel expenditures imposed under current law. For example, policies should make clear that personal use of the organization's vehicles or accommodations is prohibited, unless the expenditure is treated as compensation. Public charities may permit individuals to reimburse the organization for the fair market value of the personal use of its property, though this option is not always available to private foundations because of restrictions on transactions with disqualified persons.

Federal per diem rates can be a useful guide for charitable organizations, but there are many circumstances in which it is not reasonable or even possible to reimburse at federal per diem rates while conducting the business of the organization. In addition, federal government employees are eligible for travel services and are able to secure special rates

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<sup>22</sup> "Federal travel regulations define premium class travel as any class of accommodation above coach class, that is, first or business class." U.S. General Accounting Office, Travel Cards: Internal Control Weaknesses at DOD Led to Improper Use of First and Business Class Travel," October 2003 (GA)-04-88).

for travel and accommodations that are not currently available to charitable organizations.

The detailed guidance provided in IRS Publication 463: Travel, Entertainment, Gift and Car Expenses should serve as a guide for managers of charitable organizations in avoiding lavish, extravagant, or excessive expenditures.

Amendment to the Secretary's Employment Agreement

The Secretary's employment agreement of September 28, 1999, is amended in two respects:

- (1) Paragraph #7 is amended to provide in its entirety, "The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive an annual housing allowance in the amount of \$\_\_\_\_\_ for calendar year 2007, which sum may be adjusted in future years as determined in the sole discretion of the Board of Regents. Payment of the housing allowance will be made bi-weekly."
- (2) Paragraph #8 is amended to provide in its entirety, "The Smithsonian will provide for the Secretary's reimbursement for reasonable costs for official travel and official entertainment, consistent with its policies for record keeping, but not limited by them as to the amount of such expenditures. The Secretary is authorized to travel first class, including the use of car services and premium hotel accommodations, consistent with IRC § 162(a)(2).<sup>1</sup> The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence is appropriate. Reimbursement for his spouse's travel expenses shall be deemed to be compensation to the Secretary, except when she is conducting bona fide and official business of the Institution and the nature of the business and her expenses are properly substantiated. The Smithsonian will also provide the Secretary a suitable car and driver for transportation to local official functions, though this is not to include daily commuting between home and work."

Roger W. Sant  
Chairman, Executive Committee  
Board of Regents  
Smithsonian Institution

Lawrence M. Small  
Secretary  
Smithsonian Institution

January 29, 2007,

Deleted: ¶  
¶  
¶  
~~~~~Section Break (Continuous)~~~~~

<sup>1</sup> See Panel on the Nonprofit Sector, Draft Principles for Self Regulation, Section C. Principles for Strong Financial Oversight, subsection 22, for a discussion of the applicability of IRC, 162(a)(2) to the nonprofit sector.

**Huerta, John**

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**From:** Hobbins, James M.  
**Sent:** Thursday, January 25, 2007 5:37 PM  
**To:** Huerta, John  
**Cc:** Small, Lawrence  
**Subject:** RE: Amending the Secretary's Agreement

John,

Thanks for your thoughtful work. I hope Larry has the tools with which he can digest your attachments. If this turns out to be relatively straightforward, I'd be delighted to reach agreement between Larry and Roger by Monday, January 29<sup>th</sup>, though honestly there is no compelling reason to rush it.

With best wishes,

Jim

---

**From:** Huerta, John  
**Sent:** Thursday, January 25, 2007 5:03 PM  
**To:** Hobbins, James M.  
**Cc:** Small, Lawrence  
**Subject:** RE: Amending the Secretary's Agreement

Jim,

Attached are the revised amendments to the Secretary's employment agreement. As you will see, I dropped a footnote reference to the Panel on the Nonprofit Sector draft standards for travel for nonprofit entities. It is not my intention that the footnote be included in the final amendment. I am including it so that both the Secretary and the Chairman of the Executive Committee are aware of the evolving standards for non-profits in this area of the law. It is important to note that the Internal Revenue Code does not define "lavish" or "extravagant," which means that, in the event of an audit of travel expenses by the Internal Revenue Service (either as a part of a personal audit of the Secretary or an audit of the Smithsonian), the agent would be looking at the travel expenses of other chief executives in the non-profit arena to determine the standard practice. According to the Independent Sector Report on non-profits, first class travel should only be used for specified and pre-approved purposes set forth in the organization's travel policies, such as flights longer than six hours, overnight flights, etc. Absent an exception, the Report advises that board members and executives should make the same arrangements as other employees unless the Board makes a specific finding that first class travel is justified by legitimate business reasons. The risk to the Secretary from routinely incurring first class travel expenses without such a finding by the Board of Regents is that the Internal Revenue Service, in the event of an audit, might conclude that such expenses in the context of a non-profit are lavish and extravagant. In that case, not only would the amount of the expenses over and above what would otherwise be considered reasonable be deemed to be additional compensation to the Secretary (which would result in additional taxes due plus penalties and interest, as well as penalties and interest imposed on the Institution for failing to withhold appropriate taxes), but it is conceivable that the amounts also could be deemed "excess benefit transactions." The consequences of such a finding would be significant not only for the Secretary, who would then have to return the excess payments and pay a sizeable excise tax (25% of the excess benefit), but liability (10% of the excess benefit) might also rest on the person(s) who authorized the payments. In addition, such excess benefit transactions might be required to be reported on the



Institution's Form 990T. See IRC 4958.

I am including the Panel on the Nonprofit Sector draft recommendations for your perusal as well.

As always, I will be happy to discuss the draft agreement with you. I am copying the Secretary on this transmittal as I know he will likely be interested in the subject matter and may have questions for me as well.

Best wishes,

John E. Huerta ([huertaj@si.edu](mailto:huertaj@si.edu))  
General Counsel, Smithsonian Institution  
(v) 202-633-5099; (fax) 202-357-4310  
1000 Jefferson Dr. S.W., Suite 302  
Washington, D.C. 20560-0012

Mailing Address:  
Office of General Counsel  
P.O. Box 23286  
Washington, D.C. 20026-3286

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**From:** Hobbins, James M.  
**Sent:** Wednesday, January 24, 2007 6:40 PM  
**To:** Huerta, John  
**Subject:** Amending the Secretary's Agreement

John,

Here's my first draft. I'll look forward to your reactions.

With thanks and best wishes,

Jim

IRC7345

3/28/2007

## Huerta, John

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**From:** Small, Lawrence  
**Sent:** Thursday, January 25, 2007 6:04 PM  
**To:** Hobbins, James M.; Huerta, John  
**Subject:** Re: Amending the Secretary's Agreement

Jim/John: From my perspective, the existing employment agreement I have with the Institution has worked well over the last seven years. Certainly, the detailed review recently completed has shown that I have lived up to the letter and spirit of the deal that was made and from my perspective, so has the Smithsonian.

Consequently, I have no desire to enter into even the slightest negotiation to "re-cut", in any substantive way, the deal that was made. I have no interest in seeking greater benefits than those that were committed to me and which have been operative over the last 7 years. Similarly, I'm not willing to discuss giving up one iota of what the Institution agreed to provide before I came to work.

If the Institution, at some point, comes to the conclusion it isn't comfortable with providing a particular part of the agreement in a certain way, than it should figure out another way to deliver the same value. It would represent the highest possible degree of naiveté to think a discussion could even be started where, after all that has been accomplished over the course of the last 7 years, I would entertain some form of "give-up."

From my point of view, there's no sense in starting the process of amending the current agreement to gain clarity without a complete recognition by everyone involved that neither I nor the Institution is expected to "give up" anything committed to in the original agreement and essentially institutionalized by the practices followed over the last 7 years.

And, once again, if there's any apparent complexity to the proposed amendments, such as in the wording raised by John, I shall require, as is standard procedure in senior level employment contract negotiations, the Institution to provide whatever level of independent outside counsel is required to represent me.

All the best,

Larry

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: Hobbins, James M.  
To: Huerta, John  
Cc: Small, Lawrence  
Sent: Thu Jan 25 17:37:11 2007  
Subject: RE: Amending the Secretary's Agreement

John,

Thanks for your thoughtful work. I hope Larry has the tools with which he can digest your attachments. If this turns out to be relatively straightforward, I'd be delighted to reach agreement between Larry and Roger by Monday, January 29th, though honestly there is no compelling reason to rush it.

With best wishes,

# EXHIBIT 10

**Huerta, John**

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**From:** Small, Lawrence  
**Sent:** Thursday, January 25, 2007 7:16 PM  
**To:** Huerta, John; Hobbins, James M.  
**Cc:** Lee, Yong  
**Subject:** Re: Amending the Secretary's Agreement

John: Raising the tax issue you have put forth by "spelling out in the transmittal what the tax ramifications may be if we are not careful" and not presenting any recommendations to deal with them, if, in fact, you think they're substantive, neither provides good service to the Regents or to the Secretary. You can't just say the equivalent of "You should worry about this" and leave things at that, expecting that the Secretary should modify 7 years of practice to conform with some new interpretation of what's acceptable.

If first class air travel at all times, as called for by my existing arrangement and 7 years of practice, for example, poses a problem from your point of view, there's no sense in sending any possible amendments to Roger or to me until you, with help from anyone you wish, come up with some solution to deal with what you perceive might be a problem.

For example (and not having given this matter much thought), the Institution could easily make an estimate of the amount of air travel that would be incurred by me and, on occasion, my spouse (all for business reasons, of course) for each coming year and simply increase, say, my housing allowance by the grossed-up amount. I could then pay for the air travel directly. Net result: I continue to live by the deal we made, so does the Institution. It would be more costly for the Institution but if the judgment of the experts, after 7 years of doing it as we have, is that there's an excessive tax risk, then the Institution may well have to spend more money to live up to the deal it made.

I'm not proposing the foregoing. I'm just saying I'm not willing to discuss any amendments if there's even the remotest idea on the table that something like the travel arrangement that was agreed to back in 1999 is under discussion and there's no alternative for providing equivalent economic and functional value and a total indemnity from any adverse tax consequences.

I do not want any of my comments passed along to Roger. This is strictly a discussion that you, Jim and I are having. We shouldn't go to Roger until we are completely comfortable that any proposed amendment is good for the Institution and good for me, is economically equivalent to the existing arrangement and operative practices and protects everyone from adverse consequences.

As Jim points out, there's no reason to rush. These issues should be settled before we go back to the Board. It's not right to toss any perceived problems in their lap.

All the best,

Larry

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Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** Huerta, John  
**To:** Small, Lawrence; Hobbins, James M.  
**Sent:** Thu Jan 25 18:20:14 2007  
**Subject:** RE: Amending the Secretary's Agreement

Larry,

Thank you for your comments. I am a firm believer that you have lived up to the letter and spirit of your employment agreement with the Smithsonian Institution. By drafting the

revisions, I was responding to a request from Roger Sant (given to me through Jim Hobbins) to draft changes to the indicated sections of your employment agreement. I believe that Roger was motivated by the comments and recommendations of the Acting Inspector General.

I wasn't trying to cut back on any of the benefits that you have received as Secretary of the Smithsonian Institution. I was attempting to bring clarity by explicitly indicating that you were entitled to first class travel, including car service and premium hotel accommodations. Your existing agreement did not have that clarity.

I am only motivated by loyalty to you and the Institution, and I am trying to protect both parties by clearly spelling out in the transmittal what the tax ramifications may be if we are not careful.

Obviously, if you and Roger do not wish to amend your employment agreement, neither Jim nor I are requiring you to do so.

Shall I forward your response to Roger directly, along with my transmittal to you, so that he will understand why Jim and I are not proceeding with his request?

Best wishes,

John E. Huerta (huertaj@si.edu)  
General Counsel, Smithsonian Institution

-----Original Message-----

From: Small, Lawrence  
Sent: Thursday, January 25, 2007 6:04 PM  
To: Hobbins, James M.; Huerta, John  
Subject: Re: Amending the Secretary's Agreement

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**Huerta, John**

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**From:** Small, Lawrence  
**Sent:** Thursday, January 25, 2007 7:16 PM  
**To:** Huerta, John; Hobbins, James M.  
**Cc:** Lee, Yong  
**Subject:** Re: Amending the Secretary's Agreement

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Larry

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Sent from my BlackBerry Wireless Handheld

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**Subject:** RE: Amending the Secretary's Agreement

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John E. Huerta (huertaj@si.edu)  
General Counsel, Smithsonian Institution

-----Original Message-----

From: Small, Lawrence  
Sent: Thursday, January 25, 2007 6:04 PM  
To: Hobbins, James M.; Huerta, John  
Subject: Re: Amending the Secretary's Agreement

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All the best,

Larry

-----  
Sent from my BlackBerry Wireless Handheld

# EXHIBIT 11



**From:** JAMES M. Hobbins  
**To:** Lee, Yong  
**Date:** 1/11/00 10:17AM  
**Subject:** Re: larry's compensation

Yong,

About a week ago I provided a copy of the Secretary's employment agreement to Carolyn to help her understand what needs to be arranged. I discussed with her the salary and payment in lieu of pension. I did not go into the housing allowance, as that is an amount, not to be exceeded, to be reimbursed upon the Secretary's presentation in writing of accounts or receipts, handled in the Office of the Secretary.

Having heard nothing further from Carolyn, I assume all's in order.

Jim

>>> Yong Lee 01/11/00 09:30AM >>>

Hiya Jim:

Does Carolyn know all of the components of Larry's pay package - like housing allowance; pension payments; salary? Shall I discuss with her how all the components will be paid?

Thanks,

YL

**CC:** Trail, Leigh

# EXHIBIT 12



Smithsonian Institution

Memo

Office of the Secretary

Date February 10, 2000

To Jim Hobbins (cc: Barber Conable)

From Larry Small

Subject Disbursal of Housing Allowance

I wish to establish the procedure by which I will receive monthly payments of the housing allowance that is part of my September 28, 1999, employment agreement. As you know, Paragraph #7 of that agreement indicates the following:

The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance not to exceed \$150,000 per year in compensation for up to fifty percent (50%) of the actual costs of his housing. Payment of these funds will be made by the Smithsonian to the Secretary monthly upon his presentation monthly of records of housing operating and maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures.

Given the conservatively estimated value of my main residence and associated gallery, in both of which we will continue to do official entertaining on behalf of the Smithsonian, the following computation of monthly costs of home ownership demonstrates that I qualify for the full allowance on the basis of these costs alone:

|                                         |             |
|-----------------------------------------|-------------|
| Value of residence and associated space | \$4,000,000 |
| Equivalent rate of mortgage, per annum  | 8.5%        |
| Calculated cost of ownership, per annum | \$340,000   |
| 50% share of annual cost of ownership   | \$170,000   |

Since the 50% share of my calculated cost of ownership exceeds the Smithsonian's housing allowance, I would ask for the maximum \$150,000 per year, or \$12,500 per month.

Our signed agreement provides for the disbursal of these funds on a monthly basis. I understand that this payment, unlike my direct reimbursements, will be taxable under IRS regulations. I will be pleased to receive \$12,500 monthly less standard withholding determined by the Comptroller.



Smithsonian Institution

Memo

Office of the Secretary

Date February 10, 2000

To Elard Phillips

cc Ed Knapp, Yong Lee

From Jim Hobbins

Subject Payment of the Secretary's Housing Allowance

I have just received the attached memo from Secretary Small on the matter of his housing allowance, which you and I discussed yesterday. As his request represents a mortgage payment, it is his preference, from which I take no exception, to receive this payment by direct deposit in his bank account on the first business day of each month. Accordingly, his first payment would be due as soon as you are able and each subsequent payments in the year 2000, for instance, would be March 1, April 3, May 1, June 1, July 3, August 1, September 1, October 2, November 1, and December 1.

If you need additional information to arrange for the direct deposit, please work with Yong Lee. She can be reached at 357-1846.

Many thanks for your help!

**From:** JAMES M. Hobbins  
**To:** Lee, Yong  
**Date:** 2/10/00 11:38AM  
**Subject:** Re: housing allowance

Yong,

If Larry really wants it, I'm sure I can get the Comptroller to pay him as soon as possible and again, prospectively, on the first business day of each succeeding month.

Jim

>>> Yong Lee 02/10/00 10:52AM >>>

Well, that sounds logical to me. But I think Larry will say that the rationale behind paying him the allowance is for carrying the cost of the "mortgage" which if he were to pay for a mortgage, he would do that the 1st of every month for the coming month.

I just have a feeling that, given his daily questioning of whether or not he received his housing allowance, he's expecting it now, not on March 1. If you think we're stretching it too much with this, then we can think of something else.

What do you think?

YL

>>> JAMES M. Hobbins 02/10/00 10:35AM >>>

Yong,

Can we talk about timing? Since the housing allowance is supposed to represent compensation for actual expenses (even though we're doing it on the basis of a calculated amount), it seemed to me that it would be more in keeping with the employment agreement to request that each payment should be made on the first business day of the month, in recognition of the expenses of the preceding month. This would mean a payment on March 1 for February, if you understand me.

What do you think? Should we discuss?

Jim

>>> Yong Lee 02/10/00 09:29AM >>>

Hi Jim:

You'll have seen Larry note re housing allowance. Can you ask the Comptroller to direct deposit \$12,500 for February as soon as possible, with the rest paid directly the first of every month, as you suggested?

Thanks,

YL

1/31/02

Re: Secretary's housing allowance

Discussed w J. E. H. Agreed that new yearly amount should be divided by 12 and paid on 1st of each month. For January, 2002, calculate pro-rata amount from January 13 to January 31, 2002, and provide to Secty.

Called Betty Pritchard and conveyed opinion. She said she will call Jim Hobbs to confirm suggested procedure.

IRC8916

# EXHIBIT 13

**From:** "Yong Lee" <yong\_lee@fanniemae.com>  
**To:** <newmanc@si.edu>, <doconnor@si.edu>  
**Date:** 10/25/99 2:31PM  
**Subject:** MESSAGE FROM LARRY SMALL

Connie/Dennis:

Just to recap, it's my understanding the two of you are moving forward on the following initiatives:

1. Creation of a job description and commencement of an executive search for a CFO to supervise all financial functions, e.g., planning and budgeting; current CFO's functions; treasury; et. al.

I'd like to see the job description and the suggested range of the compensation package when appropriate.

2. Same as above for a Chief Information Technology Officer to take responsibility for all IT functions.

3. The development of a systematic approach to benchmarking executive compensation with a defined comparator group and the creation of a process for doing annual reviews of the Smithsonian's competitive position vis-a-vis the comparator group. Lorie Rudin at Fannie Mae (the company's executive compensation specialist) stands ready to provide the Smithsonian with illustrative material. Jim Hobbins has, I believe, spoken to her already. Ultimately, we will want to go to the Regents with a proposal to adopt a formal compensation philosophy covering the composition of the comparator group, where we want to position our compensation in that universe and what the policies and procedures will be to carry out that philosophy so that we remain at the position the Regents have approved.

4. To be aligned with the basic premise of the "reinventing government" movement, we should work with KPMG to benchmark the best processes three or four highly regarded museums use to manage the allocation, use and disbursement of "trust monies." There are few people on the face of the earth who would view the federal government's approach to budgeting and spending money as a paragon of efficiency. Consequently, we should seek to take advantage of every reasonable and modern technique developed by non-government institutions in the management of their private funds and develop a set of policies and procedures that allows the "trust side" of the house to be far more agile and flexible than the federal side. Obviously, the idea here is to increase the ability of the Smithsonian to act decisively and to be able to get things done more quickly. Obviously, nothing should be done which would weaken effective control.

As a "heads-up," I will be very interested in having a professionally done attitude survey, or as they call them these days, an "employee perspectives survey," covering ALL Smithsonian employees as soon as possible. To the extent you can get a head start on this, it would be great. Hewitt Associates is a firm that does good work in this area but there are plenty of others as well. Having a good handle on employee morale as well as what their specific attitudes are about the various



aspects of their employment situation is a must. Furthermore, it would be helpful to see how attitudes vary from unit to unit.

All the best,

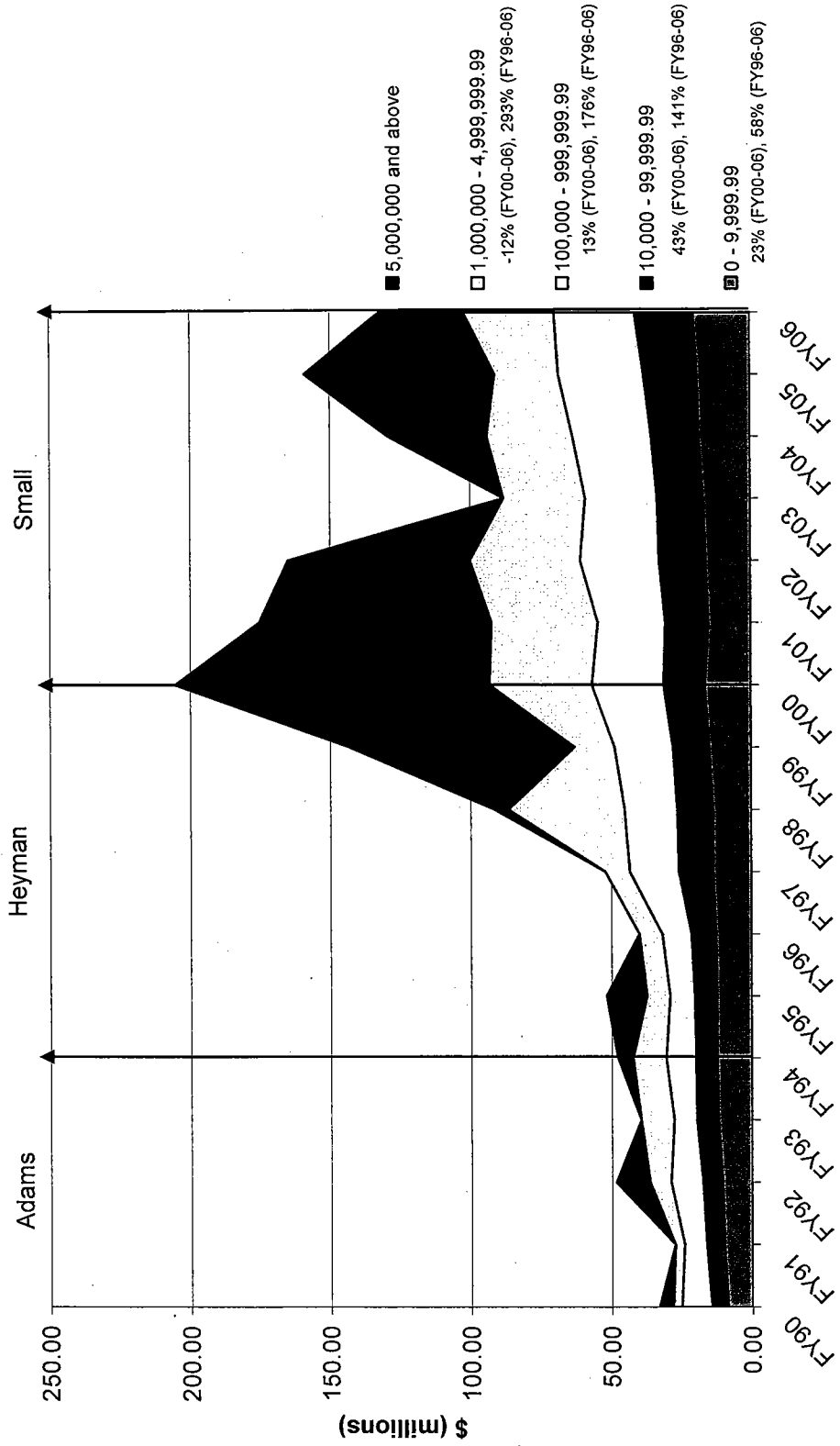
Larry

CC: "James M. Hobbins" <hobbinsj@ic.si.edu>

IRC8894

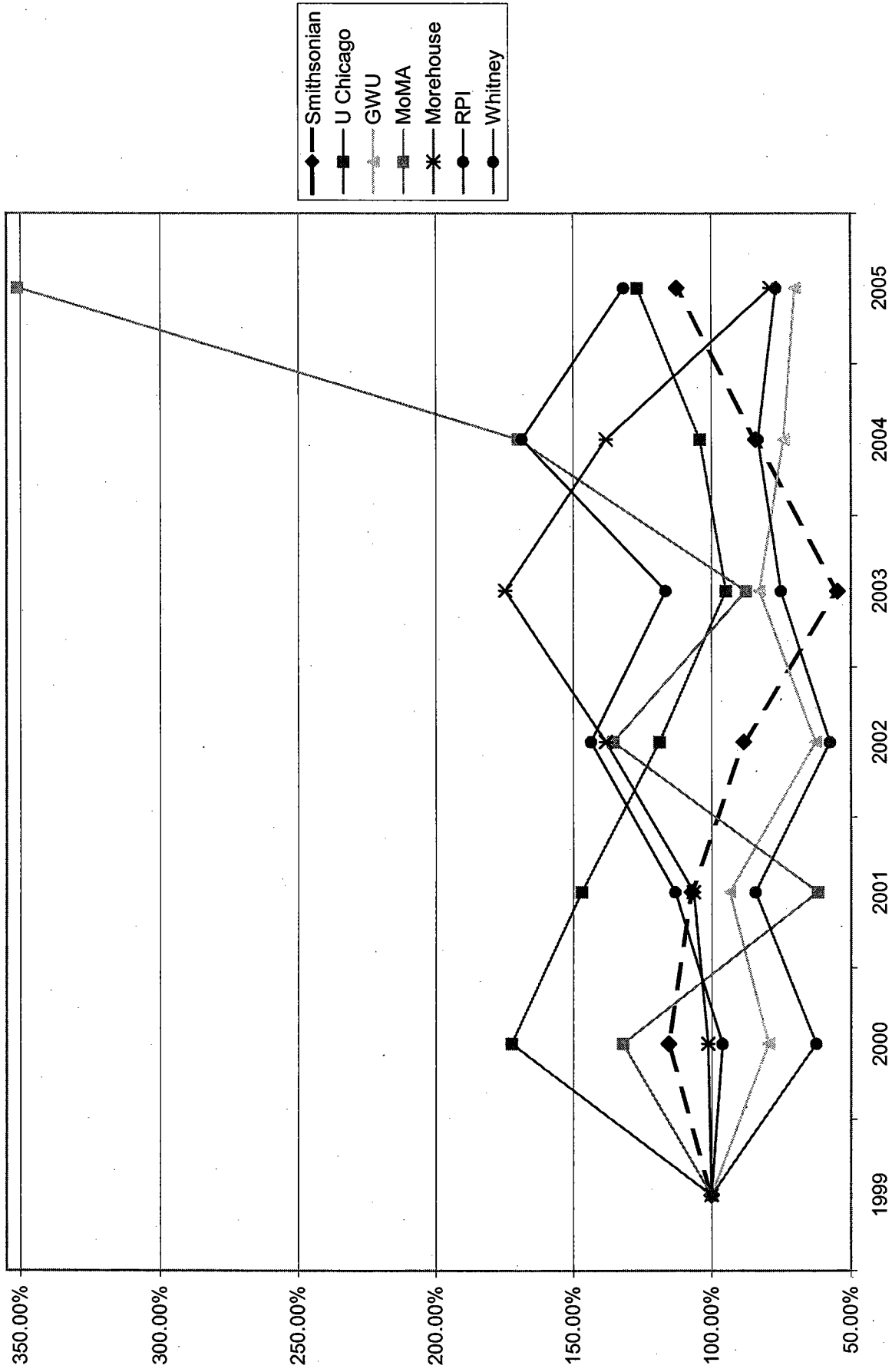
# EXHIBIT 14

# SI Funds Raised FY90-06



# EXHIBIT 15

**Public Contributions\* for Selected Institutions 1999-2005,  
Expressed as a Percentage of 1999 Public Contributions**



\*Direct and indirect public support (Form 990 Lines 1a and 1b)

# EXHIBIT 16

# SMITHSONIAN INSTITUTION

## 10-Year Appropriation History

(Federal includes Gov't Grants & Contracts)

(Dollars in millions)

|                                                        | <u>FY 1997</u> | <u>FY 1998</u> | <u>FY 1999</u> | <u>FY 2000</u> | <u>FY 2001</u> | <u>FY 2002</u> | <u>FY 2003</u> | <u>FY 2004</u> | <u>FY 2005</u> | <u>FY 2006</u> |
|--------------------------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Federal Workforce</b>                               |                |                |                |                |                |                |                |                |                |                |
| Federal Workforce (FTEs)                               | 4,119          | 4,180          | 4,200          | 4,118          | 4,040          | 4,180          | 4,324          | 4,245          | 4,192          | 4,150          |
| <b>Appropriations</b>                                  |                |                |                |                |                |                |                |                |                |                |
| Salaries & Expenses                                    | 318.5          | 333.4          | 351.3          | 371.2          | 386.9          | 420.6          | 446.1          | 488.7          | 489.0          | 516.6          |
| Facilities Capital                                     | 52.9           | 68.9           | 60.4           | 66.9           | 67.0           | 97.9           | 98.8           | 107.6          | 126.1          | 98.5           |
| <b>Total Appropriations</b>                            | <b>371.4</b>   | <b>402.3</b>   | <b>411.7</b>   | <b>438.1</b>   | <b>453.9</b>   | <b>518.5</b>   | <b>544.9</b>   | <b>596.3</b>   | <b>615.1</b>   | <b>615.1</b>   |
| Unrestricted Trust-Govt Grants & Contracts             | 56.7           | 57.3           | 66.9           | 68.8           | 79.8           | 96.1           | 108.4          | 107.7          | 119.8          | 112.0          |
| <b>Total Federal (including Grants/Contracts)</b>      | <b>428.1</b>   | <b>459.6</b>   | <b>478.6</b>   | <b>506.9</b>   | <b>533.7</b>   | <b>614.6</b>   | <b>653.3</b>   | <b>704.0</b>   | <b>734.9</b>   | <b>727.1</b>   |
| <hr/>                                                  |                |                |                |                |                |                |                |                |                |                |
| <b>TRUST FUNDS</b>                                     |                |                |                |                |                |                |                |                |                |                |
| Unrestricted (exc. Govt Grants & Contracts)            | 79.7           | 73.6           | 84.6           | 91.2           | 86.6           | 114.6          | 97.8           | 118.6          | 117.7          | 114.5          |
| Restricted                                             | 26.2           | 53.5           | 123.6          | 141.9          | 135.8          | 84.3           | 50.8           | 84.3           | 144.9          | 105.4          |
| <b>Total Trust (excl. Govt Grants &amp; Contracts)</b> | <b>105.9</b>   | <b>127.1</b>   | <b>208.2</b>   | <b>233.1</b>   | <b>222.4</b>   | <b>198.9</b>   | <b>148.6</b>   | <b>202.9</b>   | <b>262.6</b>   | <b>219.9</b>   |
| <hr/>                                                  |                |                |                |                |                |                |                |                |                |                |
| <b>TOTAL FEDERAL &amp; TRUST</b>                       | <b>534.0</b>   | <b>529.4</b>   | <b>619.9</b>   | <b>671.2</b>   | <b>676.3</b>   | <b>717.4</b>   | <b>693.5</b>   | <b>799.2</b>   | <b>877.7</b>   | <b>835.0</b>   |
| % Federal                                              | 80%            | 76%            | 66%            | 65%            | 67%            | 72%            | 79%            | 75%            | 70%            | 74%            |
| % Trust                                                | 20%            | 24%            | 34%            | 35%            | 33%            | 28%            | 21%            | 25%            | 30%            | 26%            |

# SMITHSONIAN INSTITUTION

## 10-Year Appropriation History

(Trust includes Gov't Grants & Contracts)

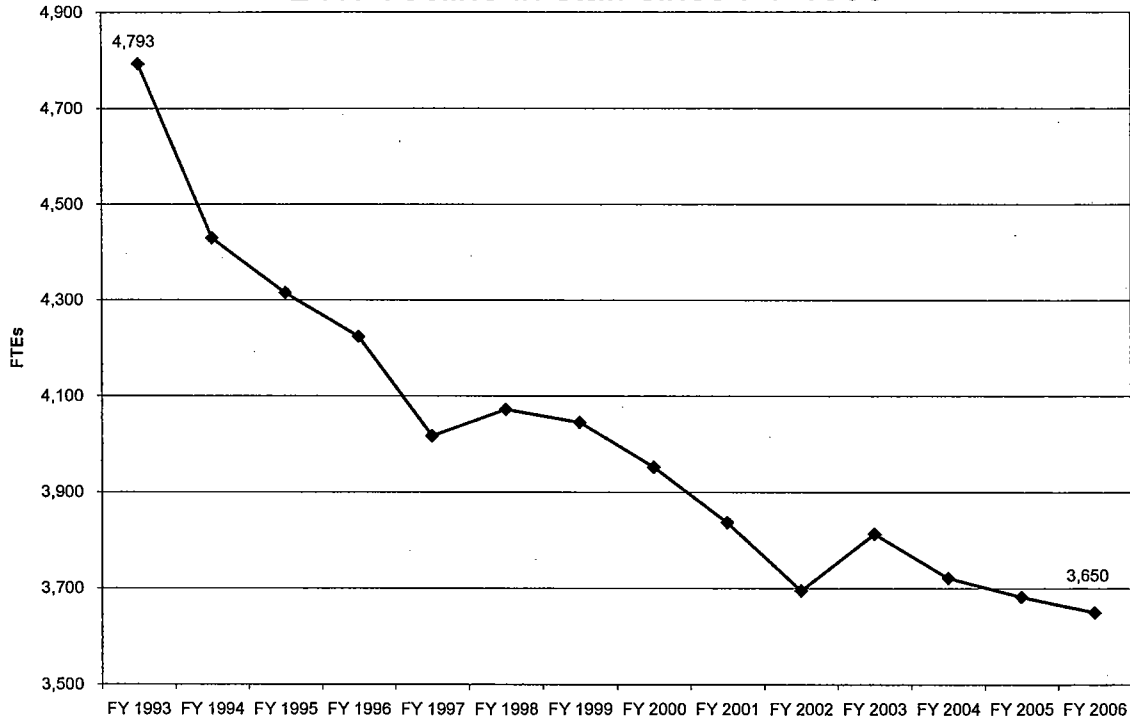
(Dollars in millions)

|                                                | <u>FY 1997</u> | <u>FY 1998</u> | <u>FY 1999</u> | <u>FY 2000</u> | <u>FY 2001</u> | <u>FY 2002</u> | <u>FY 2003</u> | <u>FY 2004</u> | <u>FY 2005</u> | <u>FY 2006</u> |
|------------------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Federal Workforce</b>                       |                |                |                |                |                |                |                |                |                |                |
| Federal Workforce (FTEs)                       | 4,119          | 4,180          | 4,200          | 4,118          | 4,040          | 4,180          | 4,324          | 4,245          | 4,192          | 4,150          |
| <b>Appropriations</b>                          |                |                |                |                |                |                |                |                |                |                |
| Salaries & Expenses                            | 318.5          | 333.4          | 351.3          | 371.2          | 386.9          | 420.6          | 446.1          | 488.7          | 489.0          | 516.6          |
| Facilities Capital                             | 52.9           | 68.9           | 60.4           | 66.9           | 67.0           | 97.9           | 98.8           | 107.6          | 126.1          | 98.5           |
| <b>Total Federal</b>                           | <b>371.4</b>   | <b>402.3</b>   | <b>411.7</b>   | <b>438.1</b>   | <b>453.9</b>   | <b>518.5</b>   | <b>544.9</b>   | <b>596.3</b>   | <b>615.1</b>   | <b>615.1</b>   |
| <hr/>                                          |                |                |                |                |                |                |                |                |                |                |
| <b>TRUST FUNDS</b>                             |                |                |                |                |                |                |                |                |                |                |
| Unrestricted-Government Grants & Contracts     | 56.7           | 57.3           | 66.9           | 68.8           | 79.8           | 96.1           | 108.4          | 107.7          | 119.8          | 112.0          |
| Unrestricted-All Other                         | 79.7           | 73.6           | 84.6           | 91.2           | 86.6           | 114.6          | 97.8           | 118.6          | 117.7          | 114.5          |
| Restricted                                     | 26.2           | 53.5           | 123.6          | 141.9          | 135.8          | 84.3           | 50.8           | 84.3           | 144.9          | 105.4          |
| <b>Total Trust (includes Grants/Contracts)</b> | <b>162.6</b>   | <b>184.4</b>   | <b>275.1</b>   | <b>301.9</b>   | <b>302.2</b>   | <b>295.0</b>   | <b>257.0</b>   | <b>310.6</b>   | <b>382.4</b>   | <b>331.9</b>   |
| <hr/>                                          |                |                |                |                |                |                |                |                |                |                |
| <b>TOTAL FEDERAL &amp; TRUST</b>               | <b>534.0</b>   | <b>586.7</b>   | <b>686.8</b>   | <b>740.0</b>   | <b>756.1</b>   | <b>813.5</b>   | <b>801.9</b>   | <b>906.9</b>   | <b>997.5</b>   | <b>947.0</b>   |
| % Federal                                      | 70%            | 69%            | 60%            | 59%            | 60%            | 64%            | 68%            | 66%            | 62%            | 65%            |
| % Trust                                        | 30%            | 31%            | 40%            | 41%            | 40%            | 36%            | 32%            | 34%            | 38%            | 35%            |



# Smithsonian Institution Staffing

24% decline in staff since FY 1993



- Insufficient funds have translated into staff reductions
- Does not include NMAI increases after 1992, NASM Hazy Center, NMAAHC & Anti-Terrorism

# EXHIBIT 17

Barry

MEMO: To File  
DATE: June 6, 2001  
FROM: Yong Lee *u*  
RE: May 4-6, 2001 trip to San Antonio, TX

We decided to book a charter flight for the Secretary's travel from Washington, DC, to San Antonio, TX, outbound on May 4, 2001, and return on May 6, 2001, for the following reasons:

The Secretary had accepted the invitation to be honored at the American Academy of Achievement in the fall of 2000. At the time of acceptance, we were not aware of any other commitments during the award weekend. The Secretary decided to accept the award because it presented an opportunity for him to talk to a wider audience about the Smithsonian and for him to talk to potential donors.


When we were booking travel to San Antonio, we realized that the award weekend was the same as the Regents meeting. The award weekend required the Secretary to stay in San Antonio Saturday evening. The Regents meetings began Sunday afternoon. The only feasible return flight from San Antonio to Washington, DC, required a change of planes that would get him into Washington only a couple of hours before the Regents meeting. There was a very real threat that if there were any delays in San Antonio or with his connecting flight, he would have missed the Regents meeting.

Because of this, we started looking into charter flights for the return (one way from San Antonio to Washington). What we discovered is that a one-way charter was only \$1,000 less than a round-trip by charter. Also, a commercial one-way outbound (from DC to San Antonio) exceeded \$1,000. In other words, the cost for a commercial one-way outbound and a charter one-way return exceeded a charter round-trip.

Given the significance of the Secretary's appearance in San Antonio and his pivotal participation in the Regents' meetings, reserving the charter was the prudent course of action.

IRC9865

P.4/24



Flight options for the 4th  
Northwest 1050am Natl via Memphis into SAT 306pm  
American 1051am Natl. via DFW into SAT 341pm  
Continental 1120am Natl. via HOU into SAT 316pm

May 6  
740am depart SAT thru DFW and into Natl. 129pm.  
545am thru DFW into Natl. 1117am  
620am thru DFW into Natl. 1159am

IRC9868

P.7/24

# EXHIBIT 18

Bob, Tom  
Bill, Owen

7/12/07

Please stop payment. Sheila Burke  
called me and this is not  
A SI travel. expump thru Jamal Myers.

This will be handled correctly and  
proceed thru and changed to Larrys personal  
funds that he contributed to SI.

F. L. [Signature]

|                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                        |  |                                                                                                                                        |  |                                                                                   |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------|--|
| <b>TRAVEL VOUCHER</b><br><small>(Read Privacy Act Statement on the back)</small>                                                                                                                                                  |  | <b>1. DEPARTMENT OR ESTABLISHMENT BUREAU DIVISION OR OFFICE</b><br>1100-OFC OF SECTY                                                                                                                   |  | <b>2. TYPE OF TRAVEL</b><br><input checked="" type="checkbox"/> TEMPORARY DUTY<br><input type="checkbox"/> PERMANENT CHANGE OF STATION |  | <b>3. VOUCHER NO.</b><br>0164TA10027                                              |  |
| <b>5. a. NAME (Last, first, middle initial)</b><br>Small, Lawrence M.                                                                                                                                                             |  | <b>b. SOCIAL SECURITY NO.</b><br>[REDACTED]                                                                                                                                                            |  | <b>6. PERIOD OF TRAVEL</b><br>a. FROM 05/04/01<br>b. TO 05/06/01                                                                       |  | <b>7. TRAVEL AUTHORIZATION</b><br>a. NUMBER(S) 0164TA10027<br>b. DATE(S) 05/31/01 |  |
| <b>c. MAILING ADDRESS (Include ZIP Code)</b><br>1000 Jefferson Drive, SW<br>SIB 205, MRC 016<br>Washington, DC 20560                                                                                                              |  | <b>d. OFFICE TELEPHONE NO.</b><br>202-[REDACTED]                                                                                                                                                       |  | <b>10. CHECK NO.</b>                                                                                                                   |  | <b>11. PAID BY</b>                                                                |  |
| <b>e. PRESENT DUTY STATION</b><br>Washington, DC                                                                                                                                                                                  |  | <b>f. RESIDENCE (City and State)</b><br>Washington, DC                                                                                                                                                 |  | <b>8. TRAVEL ADVANCE</b>                                                                                                               |  | <b>9. CASH PAYMENT RECEIPT</b>                                                    |  |
| a. Outstanding 0.00                                                                                                                                                                                                               |  | a. DATE RECEIVED                                                                                                                                                                                       |  | b. AMOUNT RECEIVED                                                                                                                     |  |                                                                                   |  |
| b. Amount to be applied 0.00                                                                                                                                                                                                      |  | c. PAYEE'S SIGNATURE                                                                                                                                                                                   |  | F. DATE ISSUED                                                                                                                         |  | POINTS OF TRAVEL                                                                  |  |
| c. Amount due Government (Attached <input type="checkbox"/> Check <input type="checkbox"/> Cash)                                                                                                                                  |  |                                                                                                                                                                                                        |  | G. FROM                                                                                                                                |  | TO                                                                                |  |
| D. Balance outstanding                                                                                                                                                                                                            |  |                                                                                                                                                                                                        |  | H. ENTERED                                                                                                                             |  |                                                                                   |  |
| <b>12. GOVERNMENT TRANSPORTATION REQUESTS, OR TRANSPORTATION TICKETS, IF PURCHASED WITH CASH</b><br><small>(List by number below and attach passenger coupon; if cash is used show claim on reverse side)</small>                 |  | I hereby assign the United States any right I may have against any parties in connection with reimbursable transportation charges described below, purchased under cash payment procedures (FPMB 40.5) |  | J. DATE ISSUED                                                                                                                         |  | K. POINTS OF TRAVEL                                                               |  |
| AGENT'S VALUATION OF TICKET (a)                                                                                                                                                                                                   |  | ISSUING CARRIER (Initials) (b)                                                                                                                                                                         |  | MODE CLASS OF SERVICE AND ACCOMMODATIONS (c)                                                                                           |  | DATE ISSUED (d)                                                                   |  |
| ACCOUNTING CLASSIFICATION:                                                                                                                                                                                                        |  | 14,711.70                                                                                                                                                                                              |  | NR-                                                                                                                                    |  | 0.00                                                                              |  |
| COMMENTS:                                                                                                                                                                                                                         |  | Trip Number 1. Business necessity and schedule conflicts required alternative transportation carriers and/or accommodations at greater cost.                                                           |  | Ok to pay per bill O'Neill ( thru GS) 7/10/01                                                                                          |  |                                                                                   |  |
| <b>13. I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me.</b>                                                                        |  | <b>TRAVELER SIGN HERE</b>                                                                                                                                                                              |  | <b>DATE</b>                                                                                                                            |  | <b>AMOUNT CLAIMED</b>                                                             |  |
| NOTE: Falsification of an item in an expense account works a forfeiture of claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (18 U.S.C. 287; Id. 1001). |  |                                                                                                                                                                                                        |  |                                                                                                                                        |  | 14711.70                                                                          |  |
| <b>14. This voucher is approved. Long distance phone calls, if any, are certified as necessary in the interest of the Government.</b>                                                                                             |  | <b>APPROVING OFFICIAL SIGN HERE</b>                                                                                                                                                                    |  | <b>DATE</b>                                                                                                                            |  | <b>17. FOR FINANCE OFFICE USE ONLY COMPUTATION</b>                                |  |
| Leslie Davis Assistant to the Sec                                                                                                                                                                                                 |  |                                                                                                                                                                                                        |  |                                                                                                                                        |  | a. DIFFERENCES, IF ANY (Explain and show amount)                                  |  |
| <b>15. LAST PRECEDING VOUCHER PAID UNDER SAME TRAVEL AUTHORIZATION</b>                                                                                                                                                            |  | <b>1. VOUCHER NO.</b>                                                                                                                                                                                  |  | <b>2. D.O. SYMBOL</b>                                                                                                                  |  | <b>3. MONTH &amp; YEAR</b>                                                        |  |
| <b>6. THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT</b>                                                                                                                                                                |  | <b>4. AUTHORIZED CERTIFYING OFFICIAL SIGN HERE</b>                                                                                                                                                     |  | <b>DATE</b>                                                                                                                            |  | <b>5. b. TOTAL VERIFIED CORRECT FOR CHARGE TO APPROPRIATION</b>                   |  |
|                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                        |  |                                                                                                                                        |  | c. APPLIED TO TRAVEL ADVANCE (Appropriation symbol): 0.00                         |  |
| <b>8. ACCOUNTING CLASSIFICATION</b>                                                                                                                                                                                               |  | SEE BLOCK 12 ABOVE                                                                                                                                                                                     |  | <b>d. NET TO TRAVELER</b>                                                                                                              |  | \$ 14711.70                                                                       |  |

Complete this information if this is a continuation sheet. **PAGE 2** OF **1** PAGES  
**TRIP# 1**  
**TRAVEL AUTHORIZATION NO. 0164TA10027**  
**TRAVELER'S LAST NAME Small**

**INSTRUCTIONS TO TRAVELER**  
 Col. (c) If the voucher includes per diem allowances for members of employee's immediate family, show members' names, ages, and relationships to employee and marital status of children (unless information is shown on the travel authorization.)  
 Col. (d) Show amount incurred for each meal, including tax and tips, and daily total meal cost.  
 (e) Show expenses, such as: laundry, cleaning and pressing of clothes, tips to bellboys, porters, etc. (other than for meals).  
 (f) Complete for per diem and actual expense travel.  
 (g) Show total subsistence expense incurred for actual expense travel.  
 (h) Show per diem amount, limited to maximum rate, or travel on actual expense, show the lesser of the amount from col. (f) or maximum rate.  
 (i) Show expenses, such as: taxi/taxicab fares (if purchased with cash), local or long distance telephone calls for Government business, car rental, relocation other than subsistence, etc.

**SCHEDULE OF EXPENSES AND AMOUNTS CLAIMED**

| DATE  | TIME (Hour and am/pm) | DESCRIPTION (Departure/arrival city, per diem computation, or other explanation of expenses) | ITEMIZED SUBSISTENCE EXPENSES |           |            |           |                               |             | MILEAGE RATE: NO. OF MILES | AMOUNT CLAIMED                |                  |                 |           |          |  |          |
|-------|-----------------------|----------------------------------------------------------------------------------------------|-------------------------------|-----------|------------|-----------|-------------------------------|-------------|----------------------------|-------------------------------|------------------|-----------------|-----------|----------|--|----------|
|       |                       |                                                                                              | BREAK-FAST (d)                | LUNCH (e) | DINNER (f) | TOTAL (g) | MISCELLANEOUS SUBSISTENCE (h) | LODGING (i) |                            | TOTAL SUBSISTENCE EXPENSE (j) | MILEAGE (k)      | SUBSISTENCE (m) | OTHER (n) |          |  |          |
| 15/04 | 01                    | D--RES: Washington, DC                                                                       |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  |          |
| 15/04 |                       | A--SAN ANTONIO, TX                                                                           |                               |           |            | 0.00      |                               |             |                            |                               |                  |                 |           |          |  |          |
| 15/04 |                       | charter flight                                                                               |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  |          |
| 15/04 |                       | faxes from office                                                                            |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 14509.40 |
| 15/04 |                       | refreshment center                                                                           |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 19.50    |
| 15/05 |                       | Subsistence                                                                                  |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 12.50    |
| 15/05 |                       | breakfast w/ Sen. Frist                                                                      |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 25.30    |
| 15/05 |                       | car service                                                                                  |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 136.00   |
| 15/05 |                       | faxes from office                                                                            |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  | 9.00     |
| 15/06 |                       | D--SAN ANTONIO, TX                                                                           |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  |          |
| 15/06 |                       | A:RES: Washington, DC                                                                        |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  |          |
| 15/06 |                       | Subsistence                                                                                  |                               |           |            |           |                               |             |                            |                               |                  |                 |           |          |  |          |
|       |                       |                                                                                              |                               |           |            |           |                               |             |                            |                               | <b>SUBTOTALS</b> | 0.00            | 0.00      | 14711.70 |  |          |
|       |                       |                                                                                              |                               |           |            |           |                               |             |                            |                               | <b>TOTALS</b>    | 0.00            | 0.00      | 14711.70 |  |          |

**Additional space is required, continue on another 1012-A BACK, leaving the front blank.**

Enter grand total of columns (j), (m) and (n), below and in item 13 on the front of this form.

**TOTAL AMOUNT CLAIMED 14,711.70**

**STANDARD FORM 1012 BACK (10-77)**

criminal, or regulatory investigations or prosecutions, or when pursuant to a requirement by this agency in connection with the hiring or firing of an employee, the issuance of a security clearance or investigations of the performance of official duty while in Government service... Your Social Security Account Number (SSN) is solicited under the authority of the Internal Revenue Code (26 U.S.C. 6011(b) and 6109) and E.O. 9397, November 22, 1943, for use as a tax payer and/or employee identification number disclosure is MANDATORY on vouchers claiming travel and/or relocation allowance expense reimbursement which is, or may be, taxable income. Disclosure of you SSN and other requested information is voluntary in all other instances; however, failure to provide the information (other than SSN) required to support the claim may result in delay or loss of reimbursement.



From:

05/17/2007 10:02 #037 P.005/013

07/10/01 . . . ACCOUNTING DETAIL

|Doc No: 0164TA10027

Copyright 1998 Gelco Information Network, Inc.

|Small, Lawrenc [REDACTED]

ACCOUNTING CLASS CODE

TRIP 1

OTHER-409

14,711.70

|       |      |      |           |
|-------|------|------|-----------|
| accs1 | 0.00 | 0.00 | 14,711.70 |
|-------|------|------|-----------|

Organization: 1100-OFC OF SECTY  
[REDACTED]

SPLIT PAY DISBURSEMENTS:

|                      |  |           |
|----------------------|--|-----------|
| TOTAL EXPENSES ----- |  | 14,711.70 |
|----------------------|--|-----------|

|                                 |  |      |
|---------------------------------|--|------|
| NON-REIMBURSABLE EXPENSES ----- |  | 0.00 |
|---------------------------------|--|------|

|                            |  |           |
|----------------------------|--|-----------|
| TOTAL AMOUNT CLAIMED ----- |  | 14,711.70 |
|----------------------------|--|-----------|

|                              |      |  |
|------------------------------|------|--|
| GOV'T ADVANCE OUTSTANDING -- | 0.00 |  |
|------------------------------|------|--|

|                             |      |  |
|-----------------------------|------|--|
| GOV'T ADVANCE APPLIED ----- | 0.00 |  |
|-----------------------------|------|--|

0.00

|                              |  |           |
|------------------------------|--|-----------|
| NET TO TRAVELER (GOVT) ----- |  | 14,711.70 |
|------------------------------|--|-----------|

|                              |      |  |
|------------------------------|------|--|
| GOV'T CHARGE CARD EXPENSES - | 0.00 |  |
|------------------------------|------|--|

|                                 |      |  |
|---------------------------------|------|--|
| GOV'T CHARGE CARD ATM ADV ----- | 0.00 |  |
|---------------------------------|------|--|

|                              |      |  |
|------------------------------|------|--|
| ADD'L GOV'T CHARGE CARD PYMT | 0.00 |  |
|------------------------------|------|--|

|                             |      |  |
|-----------------------------|------|--|
| TOTAL GOV'T CHARGE CARD AMT | 0.00 |  |
|-----------------------------|------|--|

|                                |  |      |
|--------------------------------|--|------|
| PAY TO GOV'T CHARGE CARD ----- |  | 0.00 |
|--------------------------------|--|------|

|                       |  |           |
|-----------------------|--|-----------|
| PAY TO TRAVELER ----- |  | 14,711.70 |
|-----------------------|--|-----------|

From:

05/17/2007 10:03 #037 P.006/013

07/10/01 . . . . . DOCUMENT HISTORY

|Voucher: 0164TA10027

Copyright.1998 Gelco Information Network GSD, Inc. |Small, Lawrenc [REDACTED]

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| STATUS    | DATE     | TIME    | SIGNATURE NAME       |
|-----------|----------|---------|----------------------|
| CREATED   | 06/19/01 | 1:40PM  | LESLIE DAVIS         |
| SIGNED    | 06/19/01 | 1:50PM  | LESLIE DAVIS         |
| SIGNED    | 06/22/01 | 12:29PM | LESLIE DAVIS         |
| SIGNED    | 06/27/01 | 1:39PM  | LESLIE DAVIS         |
| SIGNED    | 07/02/01 | 5:46PM  | Lawrence Small       |
| APPROVED  | 07/03/01 | 2:12PM  | James Hobbins        |
| PROCESSED | 07/06/01 | 2:25PM  | Comptroller's Office |
| DATA LINK | 07/06/01 | 2:25PM  | Comptroller's Office |

I certify that the electronic signatures listed above are valid and on file.

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
DATE

---

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Invoice Approval

ISA / SIAPISA

Authorization code.... P  
Vendor.....  
Invoice..... 01071001

Bank.....: EFT  
Pay Code: T

Effective date..... 07/10/01

Due Date: .....

Reason (Close only)...

07/10/01

Total invoice amount.: \$14,711.70

Invoice status.: P

Total line amount..... \$14,711.70

Override bal ck: N

Difference..... \$ .00

Discount..... \$ .00

Tech ent by.: SHARON WEBER

Retention amount..... \$ .00

Tech chg by.: SHARON WEBER

Net. pending payment: \$14,711.70

Tech auth by: SHARON WEBER

Tech cls by.:

Payee Name and Address

EFT Banking Data

Name.....: LAWRENCE M. SMALL

RTN...:

Address 1: .....

Acct#:

Address 2:

Type.:

Address 3:

Tin#..:

City.....: WASHINGTON

St: DC

Zip code: .....

Country: USA

Next transaction ISA

Status: COMPLETE

SC / SFS2

F1=Help

F2=Next txn

F3=Exit

F4=Prompt

F5=Hold txn

F6=Change sys

F7=

F8=

F9=

F10=

F11=

F12=Main menu

4-©

1 SIVM

160.111.218.2

DOC>

3/25

From:

05/17/2007 10:03 #037 P.008/013

PAGE 1 \*\* Read Privacy Act On Last Page \*\*

DOC NO: 01641A10027  
AUTH NO: 0164TA10027

1) NAME: Small, Lawrence M.

ADDR: 1000 Jefferson Drive,  
SIB 205, MRC 016  
Washington, DC 20560

DUTY: Washington, DC  
RES: Washington, DC  
HOURS: 8  
SFS Vendor #

TZ: 6

PHONE: [REDACTED]  
MAIL CD: 016  
ORG: 1100-OFC OF SECTY  
TITLE: Secretary  
SEC CLR:  
CARD: CARD HOLDER

Traveler Status employee

**COPY**

2) AUTH NO:0164TA10027

DATE: 05/31/01

TYPE: SINGLE TRIP

3) TRAVEL PURPOSE: OTHER (cite Description)

Attend and participate in the American Academy of Achievement's Golden Plate Awards

4) GENERAL ITINERARY

| DATE     | TIME | DEPARTED/ARRIVED LOCATIONS | PER DIEM RATE |
|----------|------|----------------------------|---------------|
| 05/04/01 |      | D-RES: Washington, DC      |               |
| 05/04/01 |      | A-SAN ANTONIO, TX          | 91/42         |
| 05/06/01 |      | D-SAN ANTONIO, TX          |               |
| 05/06/01 |      | A RES: Washington, DC      |               |

|          |                  |        |
|----------|------------------|--------|
| 05/04/01 | ACTUALS: LODGING | 357.00 |
| 05/05/01 | ACTUALS: LODGING | 357.00 |

5) OTHER AUTHORIZATIONS  
ACTUAL EXPENSES AUTHORIZED

| (6)                | EST COST | ADV AMT  |
|--------------------|----------|----------|
| M&IE               | 105.00   | 105.00   |
| OTHER              | 14509.40 | 14509.40 |
| TOTAL              | 14614.40 | 14614.40 |
| ADVANCE AUTHORIZED |          | 0.00     |

7) ACCOUNTING CLASSIFICATIONS

accs1 [REDACTED] EST COST 14614.40

8) REMARKS

Charter flight was necessary for Mr. Small to return to DC in time for the Regents meetings on May 6, 2001. American Academy of Achievement will cover all other expenses.

*OK to obligate  
per But O'Neil  
(when GB)  
7-10-01*

**ENTERED**

Ver=7.1=Copyright 1998 Gelco Information Network GSD, Inc.==10) FUNDS OBLIGATED==

9) AUTHORIZED BY  
James Hobbins

TITLE  
Exec. Asst. to Sec

DATE INITIALS DATE

*[Signature]*

7/10/01

From:

05/17/2007 10:04 #037 P.009/013

06/06/01 TRAVEL AUTHORIZATION  
PAGE: 2 \*\* Read Privacy Act On Last Page \*\*

DOC NO: 0164TA10027  
AUTH NO: 0164TA10027

| 11) GTR/TICKET NO | VALUE | CR | CLS | DATE | FROM | TO |
|-------------------|-------|----|-----|------|------|----|
|-------------------|-------|----|-----|------|------|----|

12) ITINERARY AND TRANSPORTATION EXPENSES - TRIP NO 1

| DATE     | TIME | DEPARTED/ARRIVED | LOCATIONS      | MODE | COST | DESCRIPTION |
|----------|------|------------------|----------------|------|------|-------------|
| 05/04/01 |      | D-RES:           | Washington, DC |      |      |             |
| 05/04/01 |      | A-SAN            | ANTONIO, TX    |      |      |             |
| 05/06/01 |      | D-SAN            | ANTONIO, TX    |      |      |             |
| 05/06/01 |      | A RES:           | Washington, DC |      |      |             |

TOTAL TRANSPORTATION EXPENSES 0.00

13) SUBSISTENCE AND OTHER REIMBURSABLE EXPENSES

| DATE  | ACTUAL LODGING | LODGING ALLOWED | MEALS B L D | M&IE ALLOW | P-DIEM RATE | OTHER EXPENSES | AMOUNT   |
|-------|----------------|-----------------|-------------|------------|-------------|----------------|----------|
| 05/04 | 0.00           | 0.00            |             | 31.50      |             |                | 0.00     |
|       | ACTUAL LDG:    | 0.00            |             |            |             |                |          |
|       |                |                 |             |            |             | charter flight | 14509.40 |
| 05/05 | 0.00           | 0.00            |             | 42.00      |             |                | 0.00     |
|       | ACTUAL LDG:    | 0.00            |             |            |             |                |          |
| 05/06 | 0.00           | 0.00            |             | 31.50      |             |                | 0.00     |
|       |                | 0.00            |             | 105.00     |             |                | 14509.40 |

VR7.1=RATE TABLE DATE=05/01/01=Copyright 1998 Gelco Information Network GSD, Inc

Exception to GSA Form 87

In compliance with the Privacy Act of 1974, the following information is provided: Basic authority for requiring the requested information is contained in 5 USC 5701-5733, particularly sections 5721-5733, 30 USC 905 and Executive Order 9397. Disclosure of the data by you is voluntary. The principal purpose for collecting the data is to determine the amount to reimburse an employee for expenses incurred in connection with temporary duty travel. Information may be transferred to appropriate Federal, State, local or foreign agencies when relevant to civil, criminal or regulatory investigations or prosecutions. There is no personal liability to you if you do not furnish the requested information; however, we shall not be able to reimburse you for your expenses.



From:

05/17/2007 10:04 #037 P.011/013

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| STATUS    | DATE     | TIME   | SIGNATURE NAME       |
|-----------|----------|--------|----------------------|
| CREATED   | 05/31/01 | 3:12PM | LESLIE DAVIS         |
| SIGNED    | 05/31/01 | 3:20PM | LESLIE DAVIS         |
| APPROVED  | 06/05/01 | 8:33AM | LEIGH TRAIL          |
| PROCESSED | 06/06/01 | 7:51AM | Comptroller's Office |
| DATA LINK | 06/06/01 | 7:51AM | Comptroller's Office |

I certify that the electronic signatures listed above are valid and on file.

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SIGNED

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DATE

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Invoice Header

IHM / SIAPIHM

Action..... N  
Vendor..... E XXXXXXXXXX Name: LAWRENCE M. SMALL  
Invoice..... 01071001 Invoice status: M  
Document..... T Yr 01 Loc 64 Doc TA Seq# 10027 Del Loc Del# 000 Mod# 0000  
Benf Org..... 1100 Document Vendor: LAWRENCE M. SMALL  
Src 401 Org 1100 Pgm 4001 Acct 6100 O/R 2111 DsgC IP GL: 211  
UPrj BLoc  
Inv date:..... 07/10/01 Terms.. A0 Due date 07/10/01 Bank..... EFT Inv type D  
Inv rcv date 07/10/01 Invoice returned date 1099 upd. N 1099 cd.  
Comment..... TRAVEL EXPENSES 1042 upd. N Pay code T  
Notes.... TRAV EXP - 0164TA10027  
Total amt \$14,711.70 Tech ent by.: SHARON WEBER  
Discount. \$0.00 Tech chg by.: SHARON WEBER  
Retention \$0.00 Tech auth by: SHARON WEBER  
Net pend: \$0.00 Tech cls by.: DEBRA CLARK  
1042 tax rate Exempt cd Ctry cd Inc cd Recip cd  
Eff date. 07/10/01 Per.....: 0110  
Hold..... Hold reas Hold rel..... Close reas: C

Next transaction IHM Status: COMPLETE SC / SFS2  
F1=Help F2=Next txn F3=Exit F4=Prompt F5=Hold txn F6=Change sys  
F7=Backward F8=Forward F9= F10= F11= F12=Main menu  
4-© 1 SIVM 160.111.218.2 DOC» 3/17



Invoice Approval

ISA / SIAPISA

Authorization code.... C  
 Vendor..... E [REDACTED]  
 Invoice..... 01071001  
 Effective date..... 07/12/01  
 Reason (Close only)... C

Bank..... EFT  
 Pay Code: T  
 Due Date:  
 07/10/01  
 Invoice status.: M  
 Override bal ck: N

Total invoice amount.: \$14,711.70  
 Total line amount..... \$14,711.70  
 Difference..... \$ .00  
 Discount..... \$ .00  
 Retention amount..... \$ .00  
 Net pending payment: \$ .00

Tech ent by.: SHARON WEBER  
 Tech chg by.: SHARON WEBER  
 Tech auth by: SHARON WEBER  
 Tech cls by.: DEBRA CLARK

Payee Name and Address

Name..... LAWRENCE M. SMALL  
 Address 1: [REDACTED]  
 Address 2:  
 Address 3:  
 City..... WASHINGTON St: DC Zip code: [REDACTED] Country: USA

EFT Banking Data  
 RTN...  
 Acct#:  
 Type..  
 Tin#..

Next transaction ISA Status: COMPLETE SC / SFS2  
 F1=Help F2=Next txn F3=Exit F4=Prompt F5=Hold txn F6=Change sys  
 F7= F8= F9= F10= F11= F12=Main menu  
 4-© 1 SIVM 160.111.218.2 DOC» 3/25

# EXHIBIT 19



# Smithsonian Institution

Office of the Inspector General

June 14, 2007

The Honorable Charles A. Bowsher  
The Honorable Stephen D. Potts  
A.W. "Pete" Smith, Jr.

Dear Members of the Independent Review Committee:

I appreciate the opportunity to review your draft Report to the Board of Regents of the Smithsonian. I respectfully request that you consider the following corrections and comments as you finalize the draft.

You suggest that, after the selection of Cotton & Co. as the independent accountant to review the then-Secretary's compensation and expenses, Cotton & Co.'s engagement was "transformed" into an agreed-upon procedures (AUP) review and was therefore more limited, and subject to greater influence by Smithsonian management, than would have been the case "had the original request been honored." (Draft, p. 55). That is inaccurate in two respects. First, the engagement was an AUP from the outset. As an AUP, it necessarily was limited and defined by the Institution. That is the nature of an AUP, as explained in Statements on Standards for Attestation Engagements (SSAE) 10 and 11, which are governing standards for auditors in this area. In an AUP, the independent accountant or auditor does not select or define the universe of matters to be reviewed, or select or define the criteria. Second, I do not believe that Cotton & Co.'s work was subject to influence by Smithsonian management.

The decision to conduct the review as an AUP – which was always the intended scope of the review – was fully justified by a number of practical considerations. An audit would have taken much longer and would have consumed substantially more resources, resources we do not have. The decision to conduct this analysis via an AUP enabled our office to continue its ongoing work on matters of great significance and urgently in need of correction.<sup>1</sup> The result of the AUP was that the numerous problems identified in the

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<sup>1</sup> During the period when we were overseeing the AUP, we issued a series of three audit reports on security issues at the Smithsonian (nos. M-05-05, A-05-06, and A-05-07) and two audit reports on executive compensation at the Smithsonian and at Smithsonian Business Ventures (nos. A-06-02 and A-06-06). The results of these audits are all available on our website, [www.smithsonian.org/oig](http://www.smithsonian.org/oig). During this same period, we also were overseeing the external auditors' performance of the Smithsonian's annual financial statement audits as well as external auditors' performance of audits required under the Federal Information Security Management Act (FISMA).

MRC 1204

PO Box 37012

Washington DC 20013-7012

202.633.7050 Telephone

202.633.7079 Fax

Cotton & Co. report and in my transmittal letter were brought to the attention of the Regents, the Congress, and the public more quickly than would have been possible had a full audit been performed. Given the resource constraints on my office, and the importance of timeliness, I believe that the initial decision to conduct an AUP was fully appropriate. It is misleading to the reader to criticize procedures that were proper and required for an AUP without recognizing that a full audit was never contemplated and would have entailed greater delay in bringing these issues to light.

Cotton & Co. followed all professional standards for the AUP engagement, and we monitored their work closely and issued a seven-page transmittal letter that included seven recommendations for follow-up actions by the Board of Regents. You do not mention the contents of this letter at all in your Report. Your omission leaves the impression that the Cotton & Co. report and our transmittal letter did not question any of the Secretary's expenses and that we failed to raise any questions to the Regents. In fact, in that transmittal letter, we raised many of the issues that your report discusses,<sup>2</sup> such as the questionable use of trust funds for staff meals; Mr. Small's apparent belief that Smithsonian rules did not apply to him; and that Mr. Small's use of a chartered flight, which we noted as lavish, occurred when a commercial aircraft alternative was available.

You also do not mention that, with the exception of our recommendation that the Board revise the Secretary's employment agreement, the Regents did not accept the recommendations in our transmittal letter, such as our recommendation that they consider asking the Secretary to reimburse the Institution for the flight he chartered.

I think your report does not adequately recognize my duty – an essential part of maintaining my statutory independence and impartiality – to listen to comments and arguments by all parties involved before we issue an IG report. It would have been inconsistent with the standards governing AUPs, as well as Government Auditing Standards,<sup>3</sup> *not* to have engaged in “significant back-and-forth discussions” with the Secretary's office and Cotton & Co. I do not understand what a more traditional and appropriate approach would have been. Following accepted practice, our office and Cotton & Co. sought documentation, clarification, and explanation from the Secretary's office throughout all phases of the engagement, including how the results were presented in the report. To suggest, as you do, that it was improper stands normal IG protocol on its head. What would have been improper would have been for us to ignore information,

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<sup>2</sup> I am pleased that your report confirmed comments I made in my April 11, 2007 testimony to the Senate Committee on Rules and Administration, such as my observations that the Regents did not have adequate information to conduct meaningful oversight, that the Secretary's office limited and polished what the Regents were told, and that the Institution did not always adequately consider its status as a trust and nonprofit when it came to spending the Institution's funds. I am also pleased that the Committee endorsed the conclusions of the two audits we issued in January 2007 of executive compensation at the Smithsonian, including our findings on the disparity in compensation between federal and trust executives, the payment of much higher trust salaries for positions that have equivalents throughout the federal government where the pay rates are much lower, and our concern that the compensation consultants used by the Smithsonian were hired by management rather than the Regents.

<sup>3</sup> Government Auditing Standards (the Yellow Book) devote seven paragraphs in the chapter on standards for attestation engagements to the importance of obtaining the views of responsible officials. See paragraphs 6.44 through 6.50.

not communicate with the subject of the procedures, and publish a report full of unverified assertions.

It is incorrect to state that “key elements of the investigation<sup>4</sup> [sic] [were] determined by members of Mr. Small’s executive team.” I was responsible for determining how the criteria that were applied to the transactions should be interpreted. I made the final decisions after fully considering all the evidence (including the parties’ intent, when a contract was involved) and measuring it against the criteria that applied. While Smithsonian staff prepared the schedules for review (a common practice, even in audits), I had responsibility for what transactions on those schedules would be included in the review. I personally went over each line item to make that determination. (As explained in our transmittal letter, the initial schedule included hundreds of transactions that were not the Secretary’s expenses, such as office supplies and Regents’ expenses.) I made no changes to the draft report or the transmittal letter based solely on Smithsonian staff suggestions. In sum, I did “determine[] the scope, transactions and standards of review.” I did this within the framework of an AUP, and I did not agree to any changes that, in the exercise of my independent judgment, I believed inappropriate.

You did not discuss with me or anyone on my staff the various iterations of the report. Of course the contents of Cotton & Co.’s report changed as it went through revisions and as we gathered more information. I would be happy to go over every version of the drafts with you and explain how and why I reached the conclusions I did. It is irresponsible to suggest that my independence was compromised. I would hope that you would not attack my integrity in this manner before inquiring further about specific changes or decisions I made.

Of course I listened to all affected parties; as I pointed out above, that is my obligation. It was also my obligation to use my independent judgment, which I did. When criteria were ambiguous, I did hold discussions with Cotton & Co., with the Secretary’s office, and with the Audit and Review Committee, and then used my best professional judgment and communicated my interpretation to Cotton & Co. We also required the signed representation letters on behalf of the Board of Regents and the Secretary and his staff, which certified their understandings of the Secretary’s employment agreement and, as a matter of basic contract law, the understandings of the parties to the contract are to be honored where the relevant contractual language is ambiguous. I also applied my best professional and independent judgment in determining other applicable criteria. For example, with regard to car service, the Federal Travel Regulation is ambiguous, not expressly prohibiting it. Rather, it sets forth a flexible standard that authorizes so-called special conveyances “when determined to be advantageous” to the organization, considering cost and other factors such as lost work time. Cotton & Co. may have initially had a different interpretation, but it was my responsibility to state what the

---

<sup>4</sup> Please do not describe this review as an “investigation,” as you do on pages 54 and 58 of your report. That term has a specific meaning in the work of Inspectors General. The Office of the Inspector General conducts investigations into allegations of wrongdoing by individuals. Audits and audit-related work (such as AUPs) focus on programs and operations (such as whether expenses are properly accounted for). Our work on the Secretary’s expenses and compensation was an AUP attestation engagement. Your use of the word “investigation” is therefore incorrect and misleading.

criteria were. Had they not agreed, they would have violated the standards governing AUPs.

Your criticism of the representation letters, which set forth what management and the Regents attested to, is also puzzling. Best practices for AUPs<sup>5</sup> include obtaining a representation letter from the parties subject to the review. The representation letter should include, among other things, statements acknowledging responsibility for the subject matter and acknowledging responsibility for selecting the criteria – in other words, the standards against which the subject matter will be tested – and for determining that the criteria are appropriate. That is precisely what occurred with the Cotton & Co. review. Under an AUP, we could not have rejected the assertions in those letters, whether they were post-hoc or otherwise. Cotton & Co. did state that it obtained these clarifications (Cotton & Co. review pp. 2, 4), and I explained in the transmittal letter that the representation letters established the parties' understanding of the Secretary's employment agreement (transmittal letter, pp. 5, 6).

Finally, I would note that the results of Cotton & Co.'s report and my transmittal letter are inconsistent with your suggestion that the Secretary or his staff had improperly influenced the review or that my independent judgment was compromised. The review identified over \$89,000 in unauthorized expenses, including an unauthorized cash bonus to the Secretary's Executive Assistant, and over \$28,000 in unsupported expenses. Furthermore, my transmittal letter identified a host of other problems, such as the inaccuracy of the Washington Post story in August 2001 about the Secretary's chartering an airplane; the Secretary's unsupported belief that the rules did not apply to him; the possible tax issues associated with the Secretary's chartering of the flight and his wife's travel to Cambodia; and many others. Again, by omitting any mention of the findings set forth in the final Cotton & Co. report, or in the transmittal letter, you leave the reader with the impression that the Cotton & Co. report, and our accompanying transmittal letter, found nothing wrong.

In summary, the AUP was an effective tool that brought to light numerous problems in a timely fashion. The AUP was conducted professionally and properly, and resulted in significant findings regarding the Secretary's compensation and expenses.

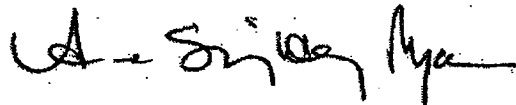
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<sup>5</sup> See, for example, Wiley Practitioner's Guide to GAAS [Generally Accepted Auditing Standards], section 2201, *Agreed-Upon Procedures Engagements* (2006 ed.)

I would welcome the opportunity to discuss these issues with you further, as I am not able to address them fully in the limited time available. Please do not hesitate to call me if you have any questions.

I appreciate your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Sprightley Ryan". The signature is fluid and cursive, with a long horizontal stroke at the end.

A. Sprightley Ryan  
Inspector General

cc Smithsonian Institution Board of Regents  
Cristián Samper K., Secretary  
John E. Huerta, General Counsel  
Celia Roady, Esq.

# EXHIBIT 20



**Purchase Order No: XXXXXXXXXXXX**  
**Statement of Work**  
**Agreed Upon Procedures**

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**Cotton & Company**

**Background**

The Secretary of the Smithsonian Institution (SI), on behalf of the Audit and Review Committee of the Board of Regents, has requested an independent third party review of the expenditures by two parties: the Secretary and the Chief Executive Officer (CEO) of Smithsonian Business Ventures (SBV). Areas of expenditures to be reviewed will include all salary, benefits, housing allowances, travel expenses, office expenses, entertainment, and any fundraising expenses incurred by the Secretary and the CEO of SBV. Additional areas of review will include any honoraria, the extension of loans, credit, or cash advances to the Secretary and the CEO of SBV, as well as the granting of any housing relocation expenses, automobile allowances or any other form of remuneration or compensation paid by SI to the Secretary and by SBV to the CEO. The review of these expenditures, to be managed by the SI Office of the Inspector General (OIG), will be documented in reports, to be delivered to the SI Audit and Review Committee.

**Statement of Work**

**Objectives:**

Contractor shall review the schedules of expenditures prepared separately by the Chief Financial Officers (CFO) of SI and SBV, to the extent they deem necessary, in order to answer the following two questions: 1) have the expenses of the Secretary and CEO of SBV been properly accounted for, and 2) have the expenses of the Secretary and CEO of SBV been reasonable in the context of the purpose of the expense and the mission of the Smithsonian and SBV respectively. With respect to the Secretarial expense review, the Contractor shall also affirm the amounts of and accounting for donations to the Institution made by the Secretary, and related matching gifts. Schedules of expenditures will be provided for the following items:

- Salary
- Bonuses
- Benefits (e.g., insurance, retirement)
- Housing allowances
- Travel expenses
- Office expenses
- Entertainment expenses
- Fund raising expenses
- Honoraria
- Loans or cash advances
- Housing relocation expenses
- Automobile allowances
- Other remuneration or compensation, including severance, deferred compensation

**Review Period**

The review period for the examination of expenditures will be SI and SBV fiscal years beginning with FY 2000 and concluding with FY 2005 activity.

### Terms of Engagement

The contractor's engagement team will have full access to the SI OIG staff. The Inspector General will entertain requests on a case-by-case basis for access to work papers associated the other work being performed by the OIG. Subject to a confidentiality agreement, the contractor will be granted appropriate access to the relevant financial systems in order to verify fully that records presented to them reflect output from the system and that all relevant information is under review. The review will cover approximately 3,500 transactions. The Institution will provide all manner of invitations, correspondence, and supporting evidence to document the purpose of travel as required to conduct a thorough review. The Institution will consider on a case-by-case basis requests to contact individuals or organizations to verify any expense.

### Deliverables

Separate deliverables shall be provided for the review of the expenditures of both the Secretary and the CEO of SBV.

1. Weekly status meetings with SI and SBV personnel and the OIG to discuss progress on the project and any findings, exceptions, or recommendation proposed to date.
2. Status briefing to describe project status to date shall be given on September 12, 2006.
3. Final report due date shall be mutually agreed upon. Twenty-five (25) hard copies of the final report and an electronic version in a format acceptable to SI shall be provided by the Contractor to the OIG.
4. Up to three briefings of report results to SI and SBV Senior Management, or as required.
5. Potential briefing of report results to the SI Board of Regents' Audit and Review Committee.
6. One complete copy of the work papers supporting all findings, conclusions and other determinations made due to OIG no later than one week after delivery of the final report.

### Standards

This review shall be conducted according to professional standards governing agreed-upon procedures.

### Period of Performance

The period of performance for this delivery order will begin July 24, 2006 (award). End date to be determined.

# EXHIBIT 21

**INDEPENDENT ACCOUNTANT'S REPORT ON  
APPLYING AGREED-UPON PROCEDURES**

November 30, 2006

To the Audit and Review Committee of the Board of Regents:

Cotton & Company LLP performed the procedures enumerated below, which were agreed to by the Smithsonian Institution Office of the Inspector General and the Institution's Chief Financial Officer, solely to assist you in evaluating compensation of the Secretary of the Smithsonian Institution and in determining if travel and other reimbursable expenditures incurred by the Secretary were reasonable in the context of a business expense related to the Smithsonian mission. The Smithsonian was responsible for preparing the four schedules provided for our review: Schedule of Expenditures of the Office of the Secretary, Schedule of Compensation for the Secretary of the Smithsonian Institution, Schedule of Housing Allowances for the Secretary of the Smithsonian Institution, and Schedule of Donations from the Secretary to the Smithsonian Institution.

We conducted this agreed-upon procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of procedures described below either for the purpose for which this report has been requested or for any other purpose.

**OBJECTIVES**

The Smithsonian identified its overall objectives as follows:

1. Determine if transactions included on the Schedule of Expenditures were properly accounted for.
2. Determine if transactions included on the Schedule of Expenditures were valid business expenses related to the Smithsonian mission or were not incurred in accordance with Smithsonian policies and guidance.
3. Verify total compensation paid to the Secretary of the Smithsonian, to include, if applicable:
  - Salary
  - Bonuses
  - Benefits
  - Housing allowances
  - Honoraria
  - Loans or cash advances
  - Housing or relocation expenses
  - Automobile allowances

- Other remuneration or compensation, including severance and deferred compensation
4. Verify the total amount of donations or in-kind contributions made by the Secretary to the Institution.
  5. Verify the total amount of related matching gifts associated with the Secretary's donations to the Smithsonian.

**BACKGROUND AND SCOPE**

The Secretary of the Smithsonian, on behalf of the Audit and Review Committee of the Board of Regents, requested an independent third-party review of the Secretary's expenditures and compensation. The Smithsonian contracted with Cotton & Company to review the Schedules of Expenditures, Compensation, Housing Allowances and Donations prepared by the Smithsonian's Chief Financial Officer (CFO). The period of the agreed-upon procedures was Fiscal Years (FY) 2000 through 2005.

To gain an understanding of the requirements of this agreed-upon procedures engagement, Cotton & Company met with the acting Inspector General (IG) and senior managers from other Smithsonian components on July 26, 2006, and on subsequent dates as necessary. We reviewed schedules prepared by the Smithsonian Office of the Chief Financial Officer, as well as the supporting documentation. We also interviewed Smithsonian officials who assist with daily administration and operation of the Secretary's office.

In addition, we reviewed policies and procedures, references, handbooks, and memorandums provided by the Smithsonian as guidance to assist us in performing the agreed-upon procedures. (See Appendix A for a comprehensive list of references and guidance.) We provided periodic status updates to the acting IG and Smithsonian staff, as well as the draft report documenting the results of our agreed-upon procedures.

**AGREED-UPON PROCEDURES AND RESULTS**

**A-1. Trace all expenditures reported on the Schedule of Expenditures<sup>1</sup> to source documentation and determine if expenditures were properly accounted for. Document all exceptions.**

The Schedule identified 1,040 transactions for review. We classified expenses as either travel reimbursement or other, except for 454 transactions for which support (or adequate support) was not provided, as follows:-

| <b>Cost Category</b> | <b>Number of Transactions</b> | <b>Dollar Value of Transactions</b>      |
|----------------------|-------------------------------|------------------------------------------|
| Travel               | <u>26053</u>                  | <u>\$285,003.68</u><br><u>298,735.28</u> |
| Other                | <u>7336</u>                   | <u>517,998.17</u><br><u>518,570.48</u>   |
| Unsupported          | <u>454</u>                    | <u>43,310.49</u><br><u>29,006.58</u>     |
| <b>Total</b>         | <b><u>1,040</u></b>           | <b><u>\$846,312.34</u></b>               |

<sup>1</sup> The Schedule of Expenditures was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

Of the 454 unsupported transactions, supporting documentation could not be located for 17, and available documentation for the other 237 was not adequate to substantiate the business validity of the transaction. These unsupported transactions are identified in Appendix B-1.

**A-2. Review supporting documentation for all transactions and identify expenses not fulfilling the Smithsonian mission or not incurred in accordance with Smithsonian policies and guidance provided by Smithsonian staff. Document all exceptions.**

Smithsonian guidance provided to us is listed in Appendix A. We identified as unallowable 2776 transactions totaling \$120,735 that did not appear necessary to fulfill the Smithsonian mission or that were not incurred within limits prescribed by Smithsonian policies. Detail for those transactions and the reason why each item was identified as unallowable is provided in Appendix B-2. Generally, transactions were identified as unallowable, because a portion of the amount exceeded *Federal Travel Regulations* (FTR) limits, trust funds used could not be used for that type of expense, or the expense did not represent a necessary Smithsonian expenditure.

**B-1. Trace amounts reported on the Schedule of Compensation<sup>2</sup> to taxable wage amounts reported on IRS Forms 990 (Non-Profit Tax Returns), Smithsonian's Statement of Earnings and Leave, Secretary's IRS Form W-2s (Record of Compensation), and employment agreement.**

Amounts shown on the Schedule of Compensation were supported by the above documentation. Amounts reported on the W-2s reconciled to the Smithsonian's Statement of Earnings and Leave. Amounts reported on the Smithsonian's Statement of Earnings and Leave on a fiscal year basis did not, however, reconcile to taxable wage amounts reported on the Forms 990, as follows:

|                                  | FY 2000        | FY 2001        | FY 2002         | FY 2003        | FY 2004           | FY 2005        |
|----------------------------------|----------------|----------------|-----------------|----------------|-------------------|----------------|
| Taxable wage amounts on Form 990 | \$356,700      | \$655,904      | \$746,069       | \$746,713      | \$790,440         | \$819,323      |
| Statement of Earnings and Leave  | <u>356,700</u> | <u>649,176</u> | <u>731,947</u>  | <u>745,606</u> | <u>827,196</u>    | <u>819,322</u> |
| Difference                       | \$0            | <u>\$6,728</u> | <u>\$14,122</u> | <u>\$1,107</u> | <u>\$(36,756)</u> | <u>\$1</u>     |

**B-2. Trace amounts reported on the Schedule of Housing Allowances<sup>3</sup> to supporting documentation as follows to ensure existence of actual expenditures:**

We performed the following verifications:

<sup>2</sup> The Schedule of Compensation was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

<sup>3</sup> The Schedule of Housing Allowances was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

| Type of Reimbursement                                   | Verification Performed                                                                                                   |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Utilities                                               | Traced a sample of 2 transactions each year to supporting invoices                                                       |
| Insurance                                               | Traced all transactions to supporting invoices                                                                           |
| Real Estate Taxes                                       | Traced all transactions to supporting invoices                                                                           |
| Grounds Service                                         | Traced all transactions over \$2,000 to supporting invoices                                                              |
| Cleaning (Housekeepers)                                 | Traced total cost to the housekeepers' W-2s and the Employment Quarterly Contribution and Wage Report (unemployment tax) |
| Maintenance                                             | Traced all transactions over \$2,000 and 5 transactions under \$2,000 to supporting invoices                             |
| Mortgage Interest or Equivalent Cost of Home Ownership* | No testing was performed                                                                                                 |

- \* This is an imputed cost on the Schedule of Housing Allowances based on the \$3,488,095 estimated market price of the Secretary's home at the time his employment agreement was signed and the average interest rate of 8.32% for a 30-year fixed-rate mortgage at that time. Because this imputed cost was based on those assumptions, we did not perform testing on the calculation.

**B-3. Compare the annual housing allowance ceiling (as reported on the Secretary's employment agreement) to costs incurred and imputed as reported on the Schedule of Housing Allowances.**

The ceiling identified in the Secretary's employment agreement is reported as "\$150,000 per year...for up to fifty percent (50%) of the actual costs of his housing". The housing allowance ceiling was increased each year as part of the Secretary's compensation package. Because the housing allowance is approved on an annual calendar year basis, we compared the ceiling to costs incurred each calendar year. Based on our transaction testing, we identified costs that did not appear reimbursable in accordance with the Secretary's employment agreement, as follows:

- Insurance costs included the cost of personal excess liability coverage for the Secretary. This insurance provides liability coverage over and above that provided by homeowners' insurance, and thus is not an actual housing cost.
- Maintenance and grounds costs were claimed for expenses that could be considered capital expenditures, which generally are considered to be purchases of assets with a useful life of more than one year. The employment agreement specifically excludes capital expenditures from reimbursable housing costs. Capital expenditures identified were as follows:
  - HVAC replacement (\$33,862)
  - Tree plantings (\$52,000)
  - Closet installation (\$17,458)

In each year, however, net incurred and imputed costs reported on the Schedule of Housing Allowances exceeded the ceiling allowance. A summary of these costs follows:

|                      | CY 2000        | CY 2001        | CY 2002        | CY 2003        | CY 2004        | CY 2005        |
|----------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Costs Incurred       | \$132,441      | \$192,187      | \$165,370      | \$198,506      | \$198,613      | \$147,271      |
| Excess Liability     |                | (1,992)        | (13,929)       | (11,700)       | (11,700)       | (8,168)        |
| Capital Expenditures |                | (33,862)       |                | (24,350)       | (27,650)       | (17,458)       |
| Net Costs Incurred   | \$132,441      | \$156,333      | \$151,441      | \$162,456      | \$159,263      | \$121,645      |
| Imputed Costs        | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> |
| Total Costs          | \$422,649      | \$446,541      | \$441,649      | \$452,664      | \$449,471      | \$411,853      |
| 50% of Total Costs   | \$211,325      | \$223,270      | \$220,824      | \$226,332      | \$224,736      | \$205,927      |
| Ceiling              | \$150,000      | \$150,000      | \$157,155      | \$162,027      | \$169,172      | \$179,322      |

**B-4. Compare the annual housing allowance ceiling (as reported on the Secretary's employment agreement) to actual payments made to the Secretary.**

Payments to the Secretary were made periodically, based on the employment agreement ceiling, instead of for documented actual expenses. While incurred and imputed costs did exceed the ceiling, differences were noted between ceilings and actual payments (based on the Secretary's Statements of Earnings and Leave), as follows:

|                                       | CY 2000        | CY 2001        | CY 2002        | CY 2003        | CY 2004         | CY 2005        |
|---------------------------------------|----------------|----------------|----------------|----------------|-----------------|----------------|
| Ceiling                               | \$150,000      | \$150,000      | \$157,155      | \$162,027      | \$169,172       | \$179,322      |
| Actual payments made to the Secretary | <u>150,000</u> | <u>150,000</u> | <u>156,558</u> | <u>162,027</u> | <u>140,977</u>  | <u>179,322</u> |
| Difference                            | <u>\$0</u>     | <u>\$0</u>     | <u>\$597</u>   | <u>\$0</u>     | <u>\$28,195</u> | <u>\$0</u>     |

**C-1 Trace all amounts from the Schedule of Donations<sup>4</sup> (cash or in-kind) to acknowledgement letters from the Smithsonian as well as to accounting records documenting receipt of the transaction (i.e., general ledger). Trace all in-kind transactions on the Schedule of Donations to available supporting documentation to ensure that transactions were valued appropriately. Trace all matching gifts made by third parties contingent upon the Secretary's donations to available supporting documentation and accounting records documenting receipt of the transaction.**

Amounts reported on the Schedule of Donations represented four types of transactions, as shown below:

<sup>4</sup> The Schedule of Donations was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.



| <b>Transaction Type</b>       | <b>Number of Transactions</b> | <b>Dollar Value of Transactions</b> |
|-------------------------------|-------------------------------|-------------------------------------|
| Secretary's Cash Donation     | 7                             | \$2,938.31                          |
| Secretary's In-Kind Donation  | 8                             | 426,355.67                          |
| Third-Party Matching Donation | 11                            | 120,000.00                          |
| In-Honor-Of Donations         | <u>11</u>                     | <u>55,000.00</u>                    |
| Total                         | <u>37</u>                     | <u>\$604,293.98</u>                 |

We traced all transactions to supporting documentation and traced receipts through the Smithsonian general ledger. Amounts were accurately reported and valued. The general ledger balance for donations did not reflect receipts for 2 transactions totaling \$321. Transactions listed as "In Honor Of" were not contributions of the Secretary or matching contributions; we did, however, trace amounts to supporting documentation and verified receipt.

**D-1. Obtain a management representation letter from the Smithsonian management and the Board of Regents to confirm to the best of their knowledge that representations were accurate and pertained to the period under review.**

We requested and received management representation letters from Smithsonian management and representatives from the Board of Regents.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of opinions on the Schedules described in the first paragraph. Accordingly, we do not express such opinions. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the information and use of the Office of the Inspector General and the Smithsonian Board of Regents and is not intended to be and should not be used by anyone other than these specified parties.

COTTON & COMPANY LLP

Sam Hadley, CPA, CGFM  
Partner

**APPENDIX A**

**REFERENCE MATERIAL AND GUIDANCE PROVIDED BY THE  
SMITHSONIAN INSTITUTION**

**Draft**

**APPENDIX A**  
**REFERENCE MATERIAL AND GUIDANCE PROVIDED BY THE**  
**SMITHSONIAN INSTITUTION**

FY 1999 Federal Salaries & Expenses and Unrestricted General Trust Fund Budget Allocations, Attachment 6 - Use of Trust Funds for Representational and Special Event Expenses

Use of Trust Funds for Representational and Special Event Expenses, FY 2005 401 Allocation Memorandum

Trust Budget Allocations and Spending Plans, FYs 2000-2005

Decision Brief for the Under Secretary, in effect from August 4, 1998 through June 28, 2000

Smithsonian Institution Travel Policies and Procedures Manual, in effect from June 29, 2000 through May 22, 2005

Smithsonian Directive (SD) 312, Travel, May 23, 2005

Smithsonian Institution Travel Handbook, May 23, 2005

Smithsonian Institution Employment Agreement for the Secretary

Smithsonian Institution: Compensation for Secretary Lawrence M. Small, Executive Committee of the Board of Regents, FYs 2001-2005

Smithsonian Directive (SD) 213, Trust Personnel Handbook, Common Types of Incentive Awards

OIG's Conclusions on the Applicability of Smithsonian Travel Policies, September 28, 2006

Interpretation of Paragraph 7 of Secretary Small's Employment Agreement, October 11, 1006

**APPENDIX B**

**SCHEDULES OF UNSUPPORTED AND UNALLOWABLE TRANSACTIONS**

**Draft**

**SCHEDULE B-1**  
**SCHEDULE OF UNSUPPORTED AND INADEQUATELY SUPPORTED TRANSACTIONS**

| <b>Invoice Date</b> | <b>Vendor</b>              | <b>Amount</b> | <b>Status of Support</b>                 |
|---------------------|----------------------------|---------------|------------------------------------------|
| 01/05/2000          | Fredrick Miley & Assoc.    | \$46.00       | No invoice, purchase order only          |
| 01/05/2000          | Fredrick Miley & Assoc.    | 2,774.50      | No invoice, purchase order only          |
| 01/07/2000          | Hodges Original            | 6,442.80      | No invoice, purchase order only          |
| 01/11/2000          | L'enfant AP                | 327.35        | No documentation provided                |
| 01/11/2000          | L'enfant AP                | 944.43        | No invoice, memo only                    |
| 01/26/2000          | Shepherd Electric Co, Inc. | 4,600.00      | No invoice, purchase order only          |
| 02/07/2000          | SI                         | 202.13        | Invoices of \$57.19 are illegible        |
| 02/17/2000          | Travel (Citibank Account)  | 212.00        | No documentation provided                |
| 03/01/2000          | Travel (Citibank Account)  | 97.00         | No invoice, SFS invoice only             |
| 03/14/2000          | Lawrence M. Small          | 124.59        | No invoice, memo only                    |
| 03/14/2000          | Lawrence M. Small          | 142.00        | No invoice, memo only                    |
| 03/23/2000          | Travel (Citibank Account)  | 2,493.80      | No documentation provided                |
| 03/27/2000          | Lawrence M. Small          | 287.53        | No invoice, memo only                    |
| 03/27/2000          | L'enfant AP                | 287.53        | No documentation provided                |
| 04/05/2000          | August Georges             | 70.00         | No invoice, purchase order only          |
| 04/05/2000          | August Georges             | 2,043.00      | No invoice, purchase order only          |
| 04/18/2000          | ACE Beverage               | 138.58        | No invoice, event schedule only          |
| 04/18/2000          | Party Rentals, Ltd.        | 587.43        | No invoice, event schedule only          |
| 04/27/2000          | Bernhard Furniture         | 400.00        | No invoice, purchase order only          |
| 04/27/2000          | Bernhard Furniture         | 427.00        | No invoice, purchase order only          |
| 05/25/2000          | Lawrence M. Small          | 212.50        | No invoice, memo only                    |
| 06/09/2000          | Lawrence M. Small          | 277.05        | No documentation provided                |
| 06/27/2000          | Lawrence M. Small          | 443.80        | No invoice, memo only                    |
| 08/31/2000          | Palace Florist             | 115.27        | Inadequately documented business purpose |
| 09/20/2000          | Splendid Fare Catering     | 355.15        | Inadequately documented business purpose |
| 09/25/2000          | Travel (Citibank Account)  | 97.00         | No documentation provided                |
| 10/03/2000          | Travel (Citibank Account)  | 108.00        | No documentation provided                |
| 10/20/2000          | Lawrence M. Small          | 402.32        | No documentation provided                |
| 10/25/2000          | Lawrence M. Small          | 108.00        | No documentation provided                |
| 10/31/2000          | Palace Florist             | 117.00        | Inadequately documented business purpose |
| 01/12/2001          | Travel (Citibank Account)  | 91.50         | No receipt, wrong receipt provided       |
| 04/18/2001          | Travel (Citibank Account)  | 91.50         | No receipt, wrong receipt provided       |
| 04/18/2001          | Travel (Citibank Account)  | 91.50         | No receipt, travel voucher only          |
| 09/19/2001          | ACE Beverage               | 3.31          | No documentation provided                |
| 09/30/2001          | Catering By Windows        | 2,487.38      | No documentation provided                |
| 01/29/2002          | Restaurant Associates      | 150.00        | Inadequately documented business purpose |
| 03/05/2002          | Restaurant Associates      | 100.00        | Inadequately documented business purpose |
| 04/02/2002          | Restaurant Associates      | 100.00        | No documentation provided                |
| 05/03/2002          | Travel (Citibank Account)  | 150.50        | No documentation provided                |
| 09/10/2002          | Guest Services, Inc.       | 102.30        | No documentation provided                |
| 09/14/2002          | Restaurant Associates      | 100.00        | No documentation provided                |
| 01/17/2003          | Citibank                   | 184.00        | No documentation provided                |
| 12/19/2003          | Citibank                   | 532.50        | No documentation provided                |
| 04/06/2004          | Palace Florist             | 18.15         | Inadequately documented business purpose |
| 04/25/2004          | Citibank                   | 289.80        | No invoice, credit card statement only   |
| 07/25/2005          | Citibank Restaurant        | 135.53        | No invoice, credit card statement only   |
| 09/14/2002          | Associates                 | 100.00        | No documentation provided                |

|            |             |                    |                                          |
|------------|-------------|--------------------|------------------------------------------|
| 12/31/2002 | Cosmos Club | 67.16              | Inadequately documented business purpose |
|            |             | <u>\$29,006.58</u> |                                          |
| 01/17/2003 | Citibank    | <u>184.00</u>      | No documentation provided                |
| 04/04/2003 | Citibank    | 86.50              | Inadequately documented business purpose |
| 12/19/2003 | Citibank    | -532.50            | No documentation provided                |

**SCHEDULE B-1**  
**SCHEDULE OF UNSUPPORTED AND INADEQUATELY SUPPORTED TRANSACTIONS**  
**(CONTINUED)**

| <b>Invoice Date</b> | <b>Vendor</b>  | <b>Amount</b>      | <b>Status of Support</b>                 |
|---------------------|----------------|--------------------|------------------------------------------|
| 04/06/2004          | Palace Florist | \$18.15            | Inadequately documented business purpose |
| 04/25/2004          | Citibank       | 289.80             | No invoice, credit card statement only   |
| 10/08/2004          | Citibank       | 1,772.20           | Inadequately documented business purpose |
| 02/18/2005          | Citibank       | 4,388.60           | Inadequately documented business purpose |
| 02/18/2005          | Citibank       | 4,492.80           | Inadequately documented business purpose |
| 03/09/2005          | Sandra H Small | 6.00               | Inadequately documented business purpose |
| 06/10/2005          | Citibank       | 1,500.40           | Inadequately documented business purpose |
| 07/25/2005          | Citibank       | 135.53             | No invoice, credit card statement only   |
| 08/12/2005          | Citibank       | <u>1,485.10</u>    | Inadequately documented business purpose |
|                     |                | <u>\$43,310.49</u> |                                          |

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**TRAVEL COSTS**

| Invoice Date | Vendor                             | Total Amount | Unallowable Amount <sup>5</sup> | Description                                | Reason (see Legend) |
|--------------|------------------------------------|--------------|---------------------------------|--------------------------------------------|---------------------|
| 05/30/2000   | Lawrence M. Small                  | \$1,492.92   | \$455.00                        | Car service, New York City                 | A                   |
| 06/19/2000   | Lawrence M. Small                  | 179.77       | 169.10                          | Airport transportation, Miami              | A                   |
| 07/13/2000   | Lawrence M. Small                  | 673.60       | 250.38                          | Car service, New York City                 | A                   |
| 09/18/2000   | Lawrence M. Small                  | 214.50       | 214.50                          | Car service, Seattle                       | A                   |
| 10/20/2000   | Lawrence M. Small                  | 761.83       | 355.98                          | Car service, San Francisco.                | A                   |
| 10/31/2000   | Lawrence M. Small                  | 851.19       | 198.00                          | Car service, Seattle and New York City     | A                   |
| 11/20/2000   | Lawrence M. Small                  | 380.68       | 380.68                          | Car service, New York City                 | A                   |
| 11/20/2000   | Lawrence M. Small                  | 432.21       | 432.21                          | Car service, San Francisco                 | A                   |
| 12/15/2000   | Lawrence M. Small                  | 428.69       | 236.21                          | Car service, Atlanta                       | A                   |
| 01/12/2001   | Lawrence M. Small                  | 620.08       | 406.00                          | Car service, Denver                        | A                   |
| 01/25/2001   | Lawrence M. Small                  | 583.09       | 376.80                          | Car service, New York City                 | A                   |
| 02/07/2001   | Lawrence M. Small                  | 355.00       | 330.00                          | Car service, Miami                         | A                   |
| 03/06/2001   | Lawrence M. Small                  | 247.80       | 247.80                          | Car service, Boston                        | A                   |
| 03/13/2001   | Lawrence M. Small                  | 2,011.02     | 1,146.89                        | Car service, Los Angeles and San Francisco | A                   |
| 04/11/2001   | Lawrence M. Small                  | 526.16       | 292.05                          | Car service, New York City                 | A                   |
| 04/11/2001   | Lawrence M. Small                  | 774.09       | 457.10                          | Car service, New York City                 | A                   |
| 05/18/2001   | Lawrence M. Small                  | 185.00       | 185.00                          | Car service, New York City                 | A                   |
| 05/23/2001   | Lawrence M. Small                  | 221.90       | 221.90                          | Car service from and to airport            | A                   |
| 06/18/2001   | Lawrence M. Small                  | 190.00       | 185.00                          | Car service, New York City                 | A                   |
| 07/11/2001   | Lawrence M. Small                  | 829.87       | 414.00                          | Car service, San Antonio                   | A                   |
| 08/09/2001   | Lawrence M. Small                  | 202.30       | 136.00                          | Car service, San Antonio                   | A                   |
| 09/10/2001   | Lawrence M. Small                  | 185.90       | 163.40                          | Car service, Jackson                       | A                   |
| 10/01/2001   | Lawrence M. Small                  | 1,176.31     | 867.10                          | Car service, New York City                 | A                   |
| 12/06/2001   | Lawrence M. Small                  | 197.00       | 197.00                          | Car service, New York City                 | A                   |
| 12/06/2001   | Lawrence M. Small                  | 207.10       | 193.50                          | Car service, New York City                 | A                   |
| 12/10/2001   | Lawrence M. Small                  | 629.45       | 325.90                          | Car service, New York City                 | A                   |
| 03/11/2002   | Lawrence M. Small                  | 401.83       | 286.00                          | Car service, Houston                       | A                   |
| 03/15/2002   | Lawrence M. Small                  | 759.26       | 470.70                          | Car service, Chicago                       | A                   |
| 04/12/2002   | Sandra H Small                     | 129.83       | 82.80                           | Car service, Cambridge                     | A                   |
| 04/12/2002   | Lawrence M. Small                  | 575.25       | 165.60                          | Car service, Cambridge                     | A                   |
| 06/14/2002   | Lawrence M. Small                  | 1,120.37     | 245.00                          | Car service, Chicago                       | A                   |
| 06/28/2002   | SI                                 | 160.10       | 160.10                          | Car service, New York City                 | A                   |
| 08/20/2002   | Lawrence M. Small                  | 1,723.75     | 609.80                          | Car service, Las Vegas                     | A                   |
| 09/13/2002   | Lawrence M. Small                  | 540.90       | 292.50                          | Car service, Chicago                       | A                   |
| 02/04/2003   | Lawrence M. Small                  | 720.62       | 280.00                          | Car service, Nashville                     | A                   |
| 03/14/2003   | Lawrence M. Small                  | 623.18       | 380.00                          | Car service, Kansas City                   | A                   |
| 03/26/2003   | Lawrence M. Small                  | 1,347.98     | 1,067.45                        | Car service, Palo Alto                     | A                   |
| 04/25/2003   | Lawrence M. Small                  | 600.75       | 352.00                          | Car service, New York City                 | A                   |
| 06/11/2003   | Lawrence M. Small                  | 598.66       | 252.00                          | Car service, New York City                 | A                   |
| 07/09/2003   | Smithsonian Institution Petty Cash | 183.50       | 183.50                          | Car service, New York City                 | A                   |
| 07/25/2003   | Lawrence M. Small                  | 395.28       | 279.00                          | Car service, New York City                 | A                   |

<sup>5</sup> The unallowable amount is the portion not claimed within Smithsonian travel policies, which require adherence to *Federal Travel Regulations*.

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**TRAVEL COSTS (CONTINUED)**

| Invoice Date | Vendor                        | Total Amount | Unallowable Amount | Description                                                            | Reason (see Legend) |
|--------------|-------------------------------|--------------|--------------------|------------------------------------------------------------------------|---------------------|
| 07/25/2003   | Lawrence M. Small             | \$441.00     | \$441.00           | Car service, New York City                                             | A                   |
| 07/31/2003   | Lawrence M. Small             | 218.00       | 196.00             | Car service, New York City                                             | A                   |
| 10/30/2003   | Lawrence M. Small             | 1,328.68     | 761.80             | Car service, New York City                                             | A                   |
| 10/31/2003   | Lawrence M. Small             | 646.89       | 383.80             | Car service, New York City                                             | A                   |
| 12/10/2003   | Lawrence M. Small             | 352.00       | 352.00             | Car service, Philadelphia                                              | A                   |
| 12/11/2003   | Lawrence M. Small             | 1,038.99     | 567.71             | Car service, Hawaii                                                    | A                   |
| 01/06/2004   | Lawrence M. Small             | 111.18       | 111.18             | Car service, New York City                                             | A                   |
| 02/20/2004   | Lawrence M. Small             | 1,140.55     | 595.63             | Car service, San Francisco                                             | A                   |
| 04/20/2004   | Lawrence M. Small             | 421.95       | 380.80             | Car service, New York City                                             | A                   |
| 04/20/2004   | Lawrence M. Small             | 1,151.80     | 637.72             | Car service, Miami                                                     | A                   |
| 04/29/2004   | Lawrence M. Small             | 749.46       | 309.40             | Car service, New York City                                             | A                   |
| 05/17/2004   | Lawrence M. Small             | 96.40        | 96.40              | Car service, New York City                                             | A                   |
| 06/30/2004   | Lawrence M. Small             | 212.00       | 212.00             | Car service, New York City                                             | A                   |
| 08/31/2004   | Lawrence M. Small             | 186.00       | 186.00             | Car service, New York City                                             | A                   |
| 09/22/2004   | Lawrence M. Small             | 305.00       | 305.00             | Car service, New York City                                             | A                   |
| 10/14/2004   | Lawrence M. Small             | 692.70       | 465.75             | Car service, Houston                                                   | A                   |
| 10/18/2004   | Lawrence M. Small             | 1,186.98     | 752.40             | Car service, New York City                                             | A                   |
| 10/26/2004   | Lawrence M. Small             | 379.80       | 379.80             | Car service, Minneapolis                                               | A                   |
| 11/01/2004   | Lawrence M. Small             | 2,194.56     | 1,421.00           | Car service, New York City                                             | A                   |
| 02/11/2005   | Lawrence M. Small             | 295.60       | 249.08             | Car service, Burnham                                                   | A                   |
| 02/11/2005   | Lawrence M. Small             | 368.42       | 365.16             | Car service, New York City                                             | A                   |
| 02/11/2005   | Lawrence M. Small             | 692.25       | 528.00             | Car service, Chicago                                                   | A                   |
| 03/09/2005   | Lawrence M. Small             | 1,554.42     | 943.55             | Car service, Las Vegas and San Francisco                               | A                   |
| 03/17/2005   | Lawrence M. Small             | 161.80       | 161.80             | Car service, New York City                                             | A                   |
| 03/17/2005   | Lawrence M. Small             | 400.00       | 180.00             | Car service, New York City                                             | A                   |
| 04/22/2005   | Lawrence M. Small             | 320.16       | 320.16             | Car service, Nashville                                                 | A                   |
| 06/15/2005   | Lawrence M. Small             | 69.35        | 30.00              | Car service, Chicago                                                   | A                   |
| 06/15/2005   | Lawrence M. Small             | 300.00       | 300.00             | Car service, Chicago                                                   | A                   |
| 06/15/2005   | Lawrence M. Small             | 1,767.24     | 927.80             | Car service, Los Angeles                                               | A                   |
| 06/20/2005   | Lawrence M. Small             | 144.55       | 144.55             | Car service, Minneapolis                                               | A                   |
| 09/19/2005   | Lawrence M. Small             | 374.00       | 374.00             | Car service, Denver                                                    | A                   |
| 11/30/2000   | Citibank (South Dakota), N.A. | 1,408.70     | 1,348.75           | Charter flight from Washington, DC, to Lackawanna Station, PA          | B                   |
| 05/22/2001   | Martin Air, Inc.              | 5.50         | 5.50               | Charter flight cost: domestic segment fee                              | B                   |
| 05/22/2001   | Martin Air, Inc.              | 272.00       | 272.00             | Charter flight cost: net of fuel surcharge and credit for flight delay | B                   |
| 05/22/2001   | Martin Air, Inc.              | 650.00       | 650.00             | Charter flight cost: landing/parking                                   | B                   |
| 05/22/2001   | Martin Air, Inc.              | 1,000.00     | 1,000.00           | Charter flight cost: aircraft overnight                                | B                   |
| 05/22/2001   | Martin Air, Inc.              | 1,011.90     | 1,011.90           | Charter flight cost: Federal excise tax                                | B                   |
| 05/22/2001   | Martin Air, Inc.              | 11,570.00    | 11,570.00          | Charter flight cost for round trip from Washington to San Antonio      | B                   |



**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**TRAVEL COSTS (CONTINUED)**

| Invoice Date | Vendor            | Total Amount | Unallowable Amount | Description                    | Reason (see Legend) |
|--------------|-------------------|--------------|--------------------|--------------------------------|---------------------|
| 08/20/2002   | Lawrence M. Small | \$1,723.75   | \$673.50           | Hotel, Las Vegas               | C                   |
| 08/20/2002   | Sandra H Small    | 1,040.09     | 673.50             | Hotel, Las Vegas               | C                   |
| 12/11/2003   | Lawrence M. Small | 1,450.42     | 1,300.00           | Hotel, Hawaii                  | C                   |
| 06/15/2005   | Lawrence M. Small | 1,767.24     | 710.00             | Hotel, Los Angeles             | C                   |
| 12/23/2003   | Lawrence M. Small | 67.06        | 67.06              | Hotel, Chantilly VA            | D                   |
| 07/15/2004   | Sandra H Small    | 17,274.75    | 5,764.00           | Trip to Cambodia: tour package | E                   |
|              |                   |              | <u>\$52,069.65</u> |                                |                     |

**OTHER COSTS**

| Invoice Date | Vendor                          | Total Amount | Unallowable Amount | Description                                                                        | Reason (see Legend) |
|--------------|---------------------------------|--------------|--------------------|------------------------------------------------------------------------------------|---------------------|
| 02/08/2000   | L'enfant AP                     | \$2,716.03   | \$149.05           | Lunches and spousal privilege fee                                                  | F, G                |
| 03/01/2000   | SI                              | 339.31       | 47.63              | Meal with NASM director                                                            | G                   |
| 04/06/2000   | Occasions Caterers, Inc.        | 334.50       | 334.50             | Lunch with Director of Policy & Analysis                                           | G                   |
| 05/23/2000   | Design Cuisine                  | 414.00       | 414.00             | Staff breakfast                                                                    | G                   |
| 05/25/2000   | Splendid Fare Catering          | 321.75       | 321.75             | Lunch with development officer                                                     | G                   |
| 05/31/2000   | Design Cuisine                  | 430.00       | 430.00             | Staff breakfast                                                                    | G                   |
| 06/02/2000   | Design Cuisine                  | 414.00       | 414.00             | Staff breakfast                                                                    | G                   |
| 06/10/2000   | Design Cuisine                  | 405.50       | 405.50             | Staff breakfast                                                                    | G                   |
| 06/10/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 06/21/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 07/05/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 07/14/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 07/25/2000   | AGE Beverage                    | 193.81       | 5.96               | Water, Secretary's direct report dinner                                            | G                   |
| 07/25/2000   | Allan Woods Flowers/Gifts, Inc. | 325.00       | 325.00             | Flower arrangement, Secretary's direct report dinner                               | G                   |
| 07/25/2000   | Party Rentals, Ltd.             | 580.81       | 580.81             | Flatware, tables, china, glassware rental for the Secretary's direct report dinner | G                   |
| 07/25/2000   | Harvest Moon Inc T/A Equinox    | 1,239.00     | 1,239.00           | Catering for the Secretary's direct report dinner                                  | G                   |
| 07/26/2000   | Susan Gage Caterers             | 1,932.00     | 1,932.00           | Catering for the Secretary's direct report                                         | G                   |
| 08/02/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 08/14/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 08/14/2000   | Design Cuisine                  | 421.50       | 421.50             | Staff breakfast                                                                    | G                   |
| 09/15/2000   | Design Cuisine                  | 449.00       | 449.00             | Staff breakfast                                                                    | G                   |
| 09/26/2000   | Design Cuisine                  | 497.00       | 497.00             | Staff breakfast                                                                    | G                   |
| 10/03/2000   | Design Cuisine                  | 497.00       | 497.00             | Staff breakfast                                                                    | G                   |
| 10/24/2000   | Design Cuisine                  | 497.00       | 497.00             | Staff breakfast                                                                    | G                   |
| 11/08/2000   | Design Cuisine                  | 561.50       | 561.50             | Staff breakfast                                                                    | G                   |
| 11/10/2000   | Design Cuisine                  | 286.00       | 286.00             | Lunch with Smithsonian management                                                  | G                   |
| 01/17/2001   | Design Cuisine                  | 505.00       | 505.00             | Staff breakfast                                                                    | G                   |
| 01/29/2001   | Design Cuisine                  | 497.00       | 497.00             | Staff breakfast                                                                    | G                   |

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                | Total Amount | Unallowable Amount | Description                                                               | Reason (see Legend) |
|--------------|-----------------------|--------------|--------------------|---------------------------------------------------------------------------|---------------------|
| 02/05/2001   | Design Cuisine        | \$497.00     | \$497.00           | Staff breakfast                                                           | G                   |
| 02/05/2001   | Design Cuisine        | 739.00       | 739.00             | Staff farewell breakfast                                                  | G                   |
| 02/20/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 03/07/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 03/12/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 03/12/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 03/14/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 03/16/2001   | Restaurant Associates | 150.00       | 150.00             | Luncheon with Smithsonian museum directors                                | G                   |
| 04/03/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 04/06/2001   | Design Cuisine        | 497.00       | 497.00             | Staff breakfast                                                           | G                   |
| 04/09/2001   | Restaurant Associates | 1,052.00     | 1,052.00           | Staff breakfast                                                           | G                   |
| 04/24/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 04/25/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 04/27/2001   | Restaurant Associates | 100.00       | 100.00             | Luncheon with director of HMSG                                            | G                   |
| 05/01/2001   | Design Cuisine        | 449.00       | 449.00             | Staff breakfast                                                           | G                   |
| 05/03/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 05/08/2001   | Design Cuisine        | 506.00       | 506.00             | Staff breakfast                                                           | G                   |
| 06/05/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 06/19/2001   | Design Cuisine        | 508.50       | 508.50             | Staff breakfast                                                           | G                   |
| 06/22/2001   | Design Cuisine        | 506.00       | 506.00             | Staff breakfast                                                           | G                   |
| 07/02/2001   | Design Cuisine        | 506.00       | 506.00             | Staff breakfast                                                           | G                   |
| 07/05/2001   | Harvest Moon Inc.     | 1,100.00     | 1,100.00           | Luncheon for direct reports                                               | G                   |
| 07/10/2001   | Design Cuisine        | 1,127.00     | 1,127.00           | Secretary's tea for the Under Secretary's staff                           | G                   |
| 07/18/2001   | Design Cuisine        | 533.00       | 533.00             | Staff breakfast                                                           | G                   |
| 07/25/2001   | Allan Woods           | 225.00       | 225.00             | Luncheon for direct reports                                               | G                   |
| 07/30/2001   | Restaurant Associates | 411.60       | 411.60             | Luncheon with the Under Secretary's directors                             | G                   |
| 07/31/2001   | Party Rentals, Ltd.   | 304.56       | 304.56             | China, glassware, flatware, and linens rental for direct reports luncheon | G                   |
| 08/03/2001   | Restaurant Associates | 294.75       | 294.75             | Luncheon with the Under Secretary's directors                             | G                   |
| 08/14/2001   | Design Cuisine        | 128.00       | 128.00             | Service charges for canceled staff breakfast                              | G                   |
| 09/25/2001   | Design Cuisine        | 534.00       | 534.00             | Staff breakfast                                                           | G                   |
| 09/28/2001   | Design Cuisine        | 555.50       | 555.50             | Staff breakfast                                                           | G                   |
| 10/16/2001   | Restaurant Associates | 376.00       | 376.00             | Staff breakfast                                                           | G                   |
| 10/26/2001   | Design Cuisine        | 489.00       | 489.00             | Staff breakfast                                                           | G                   |
| 10/31/2001   | Design Cuisine        | 412.00       | 412.00             | Staff breakfast                                                           | G                   |
| 11/02/2001   | Design Cuisine        | 495.50       | 495.50             | Staff breakfast                                                           | G                   |
| 12/05/2001   | Restaurant Associates | 380.00       | 380.00             | Staff breakfast                                                           | G                   |
| 12/14/2001   | Restaurant Associates | 380.00       | 380.00             | Staff breakfast                                                           | G                   |
| 12/29/2001   | Restaurant Associates | 350.00       | 350.00             | Service charges for canceled staff breakfast                              | G                   |
| 01/09/2002   | Restaurant Associates | 365.00       | 365.00             | Staff breakfast                                                           | G                   |
| 02/05/2002   | Restaurant Associates | 380.00       | 380.00             | Staff breakfast                                                           | G                   |
| 03/04/2002   | Restaurant Associates | 100.00       | 100.00             | Lunch with HMSG director                                                  | G                   |

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                             | Total Amount          | Unallowable Amount | Description                                                                                   | Reason (see Legend) |
|--------------|------------------------------------|-----------------------|--------------------|-----------------------------------------------------------------------------------------------|---------------------|
| 05/14/2002   | Susan Gage Caterers                | \$1,725.00            | \$1,725.00         | Dinner to welcome new director of development                                                 | G                   |
| 05/18/2002   | Restaurant Associates              | 585.00                | 585.00             | Refreshments for direct reports and unit heads                                                | G                   |
| 05/23/2002   | Allan Woods<br>Flowers/Gifts, Inc. | 340.00                | 340.00             | Centerpiece, foyer arrangement, powder room for dinner to welcome new director of development | G                   |
| 06/17/2002   | Design Cuisine                     | 406.00                | 406.00             | Staff breakfast                                                                               | G                   |
| 06/25/2002   | Design Cuisine                     | 471.50                | 471.50             | Staff breakfast                                                                               | G                   |
| 06/28/2002   | SI                                 | 281.18                | 124.50             | Dinner with development director                                                              | G                   |
| 07/06/2002   | Restaurant Associates              | 100.00                | 100.00             | Luncheon with SAO director                                                                    | G                   |
| 07/20/2002   | Restaurant Associates              | 100.00                | 100.00             | Luncheon with acting NMNH director                                                            | G                   |
| 09/14/2002   | Restaurant Associates              | 400.00                | 400.00             | Office of the Secretary staff lunch                                                           | G                   |
| 09/23/2002   | Harvest Moon Inc                   | 1,368.00              | 1,368.00           | Direct reports dinner                                                                         | G                   |
| 09/25/2002   | Design Cuisine                     | 455.00                | 455.00             | Staff breakfast                                                                               | G                   |
| 09/27/002    | DC Party Rental LLC                | 775.20                | 775.20             | Glassware, flatware, china, and linen rental for direct reports dinner                        | G                   |
| 10/24/2002   | Allan Woods                        | 300.00                | 300.00             | Flower arrangements for direct reports dinner                                                 | G                   |
| 12/20/2002   | Design Cuisine                     | 427.50                | 427.50             | Staff breakfast                                                                               | G                   |
| 01/15/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 02/28/2003   | Design Cuisine                     | 462.00                | 462.00             | Staff breakfast                                                                               | G                   |
| 03/08/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with development director                                                               | G                   |
| 03/15/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with acting NMNH director                                                               | G                   |
| 04/12/2003   | Restaurant Associates              | 2,083.00 <sup>6</sup> | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 06/28/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 07/21/2003   | Design Cuisine                     | 453.00                | 453.00             | Staff breakfast                                                                               | G                   |
| 07/21/2003   | Design Cuisine                     | 462.00                | 462.00             | Staff breakfast                                                                               | G                   |
| 09/19/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 10/06/2003   | Restaurant Associates              | 100.00                | 100.00             | Lunch with HMSG director                                                                      | G                   |
| 10/09/2003   | Design Cuisine                     | 466.50                | 466.50             | Staff breakfast                                                                               | G                   |
| 10/24/2003   | Restaurant Associates              | 350.00                | 350.00             | Farewell lunch for the Under Secretary                                                        | G                   |
| 12/04/2003   | Restaurant Associates              | 300.00                | 300.00             | Luncheon with Smithsonian employees                                                           | G                   |
| 03/18/2004   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 05/27/2004   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |
| 06/09/2004   | Restaurant Associates              | 410.00                | 410.00             | Staff breakfast                                                                               | G                   |
| 06/30/2004   | Restaurant Associates              | 100.00                | 100.00             | Lunch with FSG director                                                                       | G                   |
| 07/20/2004   | Restaurant Associates              | 100.00                | 100.00             | Lunch with NMAH director                                                                      | G                   |

<sup>6</sup> Actual invoice and amount paid to the vendor were \$100. The \$2,083.00 was a system error.

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                   | Total Amount | Unallowable Amount | Description                                            | Reason (see Legend) |
|--------------|--------------------------|--------------|--------------------|--------------------------------------------------------|---------------------|
| 07/26/2004   | Lawrence M. Small        | \$33.77      | \$33.77            | Breakfast with SBV Board Member                        | G                   |
| 10/05/2004   | Restaurant Associates    | 488.70       | 488.70             | Staff breakfast                                        | G                   |
| 11/25/2004   | Citibank                 | 550.00       | 100.00             | Lunch with NMAH director                               | G                   |
| 03/14/2000   | Lawrence M. Small        | 266.59       | 142.00             | Meal in 1999                                           | H                   |
| 05/06/2000   | ACE Beverage             | 15.99        | 15.99              | Alcoholic beverages                                    | I                   |
| 05/17/2000   | ACE Beverage             | 160.68       | 140.88             | Alcoholic beverages                                    | I                   |
| 07/25/2000   | ACE Beverage             | 193.81       | 187.85             | Alcoholic beverages, Secretary's direct report dinner  | I                   |
| 09/18/2000   | ACE Beverage             | 437.08       | 412.81             | Alcoholic beverages                                    | I                   |
| 10/10/2000   | ACE Beverage             | 253.33       | 248.86             | Alcoholic beverages                                    | I                   |
| 11/21/2000   | ACE Beverage             | 539.17       | 448.09             | Alcoholic beverages                                    | I                   |
| 02/23/2001   | ACE Beverage             | 163.38       | 163.38             | Alcoholic beverages                                    | I                   |
| 05/24/2001   | ACE Beverage             | 80.94        | 80.94              | Alcoholic beverages                                    | I                   |
| 05/30/2001   | ACE Beverage             | 260.54       | 238.83             | Alcoholic beverages                                    | I                   |
| 11/05/2001   | ACE Beverage             | 55.96        | 55.96              | Alcoholic beverages                                    | I                   |
| 01/16/2002   | ACE Beverage             | 107.92       | 107.92             | Alcoholic beverages                                    | I                   |
| 05/14/2002   | ACE Beverage             | 133.14       | 109.41             | Alcoholic beverages                                    | I                   |
| 05/31/2002   | ACE Beverage             | 161.27       | 142.89             | Alcoholic beverages                                    | I                   |
| 09/24/2002   | Ace Beverages            | 186.04       | 186.04             | Alcoholic beverages                                    | I                   |
| 06/19/2004   | Ace Beverages            | 139.88       | 139.88             | Alcoholic beverages                                    | I                   |
| 05/31/2000   | Occasions Caterers, Inc. | 800.00       | 800.00             | Personal luncheon                                      | J                   |
| 01/22/2004   | Restaurant Associates    | 100.00       | 100.00             | Lunch for personal contact                             | J                   |
| 03/18/2004   | Restaurant Associates    | 100.00       | 100.00             | Lunch for personal contact                             | J                   |
| 04/08/2004   | Restaurant Associates    | 100.00       | 100.00             | Lunch for personal contact                             | J                   |
| 05/21/2004   | Restaurant Associates    | 100.00       | 100.00             | Lunch for personal contact                             | J                   |
| 10/25/2004   | Citibank                 | 580.00       | 200.00             | Lunch for personal contact                             | J                   |
| 07/25/2005   | Citibank                 | 950.00       | 100.00             | Lunch for personal contact                             | J                   |
| 06/02/2000   | L'enfant AP              | 4,811.50     | 4,811.50           | Cash award to the Executive Assistant to the Secretary | K                   |
| 06/30/2000   | Palace Florist           | 690.70       | 690.70             | Floral arrangements to former Smithsonian employees    | L                   |
| 07/31/2000   | Palace Florist           | 54.65        | 54.65              | Floral arrangement to a Smithsonian employee           | L                   |
| 09/15/2000   | Palace Florist           | 164.23       | 164.23             | Floral arrangement to a Smithsonian employee           | L                   |
| 09/18/2000   | SI                       | 137.56       | 137.56             | Gifts for donors                                       | L                   |
| 10/31/2000   | Palace Florist           | 276.88       | 276.88             | Floral arrangements to Smithsonian employees           | L                   |
| 11/21/2000   | SI                       | 269.85       | 19.96              | Donor gifts                                            | L                   |
| 11/21/2000   | SI                       | 456.02       | 424.00             | Gifts                                                  | L                   |
| 11/30/2000   | Palace Florist           | 275.90       | 275.90             | Floral arrangements to Smithsonian employees           | L                   |
| 12/04/2000   | SI                       | 318.24       | 97.60              | Donor gifts                                            | L                   |
| 12/30/2000   | Palace Florist           | 212.95       | 212.95             | Floral arrangement to a Smithsonian employee           | L                   |
| 01/31/2001   | Palace Florist           | 119.95       | 119.95             | Floral arrangement to a Smithsonian employee           | L                   |
| 02/22/2001   | SI                       | 136.85       | 52.56              | Donor gifts                                            | L                   |
| 02/28/2001   | Palace Florist           | 72.45        | 72.45              | Floral arrangement to a donor                          | L                   |
| 04/03/2001   | Palace Florist           | 118.70       | 118.70             | Floral arrangement to a donor                          | L                   |

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor         | Total Amount | Unallowable Amount | Transaction Description                                                 | Reason (see Legend) |
|--------------|----------------|--------------|--------------------|-------------------------------------------------------------------------|---------------------|
| 04/04/2001   | SI             | \$48.54      | \$48.54            | Books for a donor                                                       | L                   |
| 05/31/2001   | Palace Florist | 112.95       | 112.95             | Floral arrangement to a former SI employee                              | L                   |
| 06/30/2001   | Palace Florist | 315.95       | 315.95             | Floral arrangement to a Smithsonian employee                            | L                   |
| 08/01/2001   | SI             | 70.16        | 15.99              | Gift for donor                                                          | L                   |
| 10/31/2001   | SI             | 349.98       | 349.98             | Champagnes and a gift basket for Smithsonian employees                  | L                   |
| 12/06/2001   | SI             | 26.00        | 26.00              | Gift for a donor                                                        | L                   |
| 12/31/2001   | Palace Florist | 325.90       | 325.90             | Floral arrangement to a Smithsonian employee                            | L                   |
| 12/31/2001   | Palace Florist | 338.85       | 338.85             | Floral arrangements to Smithsonian employees                            | L                   |
| 02/28/2002   | Palace Florist | 577.70       | 577.70             | Floral arrangements to Smithsonian employee, donor, and spouse of donor | L                   |
| 03/22/2002   | SI             | 71.18        | 13.69              | Gift for donor                                                          | L                   |
| 03/22/2002   | SI             | 80.00        | 40.00              | Book for former Chair of SNB                                            | L                   |
| 03/30/2002   | Palace Florist | 340.90       | 340.90             | Floral arrangements to spouse of employee, donor, and spouse of donor   | L                   |
| 04/30/2002   | Palace Florist | 388.85       | 388.85             | Floral arrangements to Smithsonian employees                            | L                   |
| 06/02/2002   | Palace Florist | 212.95       | 212.95             | Floral arrangements to a Smithsonian employee                           | L                   |
| 07/16/2002   | Palace Florist | 338.85       | 338.85             | Floral arrangements to Smithsonian employees and donors                 | L                   |
| 08/30/2002   | Palace Florist | 112.95       | 112.95             | Floral arrangement to a Smithsonian employee                            | L                   |
| 09/27/2002   | SI             | 9.00         | 9.00               | Museum ticket for a donor                                               | L                   |
| 09/30/2002   | Palace Florist | 275.90       | 275.90             | Floral arrangements to Smithsonian employees                            | L                   |
| 10/31/2002   | Palace Florist | 501.80       | 501.80             | Floral arrangement to a Smithsonian employee                            | L                   |
| 11/30/2002   | Palace Florist | 285.90       | 285.90             | Floral arrangement to a former Smithsonian employee                     | L                   |
| 12/31/2002   | Palace Florist | 35.00        | 35.00              | Floral arrangement to a Smithsonian employee                            | L                   |
| 01/31/2003   | Palace Florist | 260.90       | 260.90             | Floral arrangements to Smithsonian employees                            | L                   |
| 03/31/2003   | Palace Florist | 27.95        | 27.95              | Floral arrangement to a donor                                           | L                   |
| 07/12/2003   | Palace Florist | 260.90       | 260.90             | Floral arrangement to a regent                                          | L                   |
| 08/31/2003   | Palace Florist | 66.57        | 66.57              | Floral arrangement to a Smithsonian employee                            | L                   |
| 08/31/2003   | Palace Florist | 536.80       | 536.80             | Floral arrangement to a Smithsonian employee and a former regent        | L                   |
| 10/31/2003   | Palace Florist | 44.80        | 44.80              | Floral arrangement to a supporter                                       | L                   |
| 11/30/2003   | Palace Florist | 224.60       | 224.60             | Floral arrangements to donors                                           | L                   |
| 12/31/2003   | Palace Florist | 119.44       | 119.44             | Floral arrangement to a Smithsonian employee                            | L                   |

**SCHEDULE B-2**  
**SCHEDULE OF UNALLOWABLE TRANSACTIONS**  
**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor            | Total Amount | Unallowable Amount | Transaction Description                                             | Reason (see Legend) |
|--------------|-------------------|--------------|--------------------|---------------------------------------------------------------------|---------------------|
| 03/31/2004   | Palace Florist    | \$158.05     | \$158.05           | Floral arrangement to former chair of SNB                           | L                   |
| 04/06/2004   | Palace Florist    | 242.75       | 242.75             | Floral arrangement to a former Smithsonian employee                 | L                   |
| 04/21/2004   | Lawrence M. Small | 257.60       | 257.60             | Gift to chair of SNB                                                | L                   |
| 06/21/2004   | Palace Florist    | 68.90        | 68.90              | Floral arrangement to a former regent                               | L                   |
| 06/26/2004   | Palace Florist    | 163.95       | 163.95             | Floral arrangement to a former regent                               | L                   |
| 06/30/2004   | Palace Florist    | 139.90       | 139.90             | Floral arrangement to a former Smithsonian employee                 | L                   |
| 07/31/2004   | Palace Florist    | 731.55       | 731.55             | Floral arrangements to Smithsonian employees and a SNB board member | L                   |
| 09/15/2004   | Palace Florist    | 114.95       | 114.95             | Floral arrangement to a Smithsonian employee                        | L                   |
| 12/03/2004   | Lawrence M. Small | 404.76       | 404.76             | Gifts to donors                                                     | L                   |
| 12/25/2004   | Citibank          | 1,806.76     | 664.96             | Smithsonite for donors                                              | L                   |
| 01/25/2005   | Citibank          | 114.95       | 114.95             | Floral arrangement to a Smithsonian employee                        | L                   |
| 01/28/2005   | Lawrence M. Small | 458.04       | 248.51             | Gift                                                                | L                   |
| 02/25/2005   | Citibank          | 121.51       | 121.51             | Floral arrangement to a donor                                       | L                   |
| 03/25/2005   | Citibank          | 174.38       | 174.38             | Floral arrangement to a Smithsonian employee                        | L                   |
| 04/18/2005   | Lawrence M. Small | 20.79        | 20.79              | Book for a regent                                                   | L                   |
| 04/25/2005   | Citibank          | 242.01       | 242.01             | Floral arrangements to donors                                       | L                   |
| 05/25/2005   | Citibank          | 173.38       | 173.38             | Floral arrangement to a Smithsonian employee                        | L                   |
| 06/22/2005   | Lawrence M. Small | 224.12       | 224.12             | Floral arrangement to a donor                                       | L                   |
| 06/25/2005   | Citibank          | 265.31       | 265.31             | Floral arrangements to Smithsonian employees                        | L                   |
| 07/25/2005   | Citibank          | 121.51       | 121.51             | Floral arrangement to a Smithsonian employee                        | L                   |
| 08/11/2005   | Lawrence M. Small | 248.83       | 248.83             | Gift to former Secretary of Smithsonian                             | L                   |
| 08/25/2005   | Citibank          | 492.57       | 492.57             | Floral arrangements to Smithsonian employees                        | L                   |
| 09/25/2005   | Citibank          | 64.95        | 64.95              | Floral arrangement to a regent staffer                              | L                   |
|              |                   |              | <u>\$68,665.40</u> |                                                                     |                     |

**SCHEDULE B-2**  
**NOTES**

- A. The Secretary used car service during a number of trips. According to the Secretary's employment agreement, the Smithsonian only provides a suitable car and driver for transportation to local official functions. The Smithsonian travel policy states that travelers should select "The mode of transportation that is most advantageous to SI when cost and other factors are considered...." We classified the cost of all out-of-town car service for which there was no written justification as unallowable.
- B. The Secretary took charter flights from Washington, DC, to Scranton, Pennsylvania, on November 30, 2000, and from Washington, DC, to San Antonio, Texas, on May 22, 2001, to attend Smithsonian-related social functions. The Secretary's employment agreement permits first-class seating on flights; it does not, however, authorize charter flights.
- C. The Secretary claimed actual lodging and meals for his travel. Smithsonian travel policies state that the Smithsonian follows the FTR. Smithsonian travel policies do, however, make an exception to permit actual lodging and per-diem costs for travelers to exceed FTR limits up to a maximum of 300 percent of those limits. The Office of the Inspector General concluded on September 28, 2006, that this exception applies to the Secretary's travel. Lodging for three of the Secretary's trips exceeded 300 percent of the FTR maximum, as follows:

| Travel Date       | Locality        | FTR (Lodging) | 300% FTR | Actual Room Rate |
|-------------------|-----------------|---------------|----------|------------------|
| 6/27/02-6/30/02   | Las Vegas, NV   | \$79          | \$237    | \$449            |
| 11/20/03-11/21/03 | Kauai, HI       | \$158         | \$474    | \$650            |
| 5/25/5-5/27/05    | Los Angeles, CA | \$100         | \$300    | \$355            |

- D. The Secretary had overnight accommodations at a hotel in Chantilly, Virginia, for Udvar-Hazy events on December 22, 2003. Chantilly is approximately 24 miles from the Secretary's Washington, DC, office, which is considered his official duty station. The Smithsonian's travel policy states that per diem starts when an employee departs his home, office, or duty station. Due to the proximity of the events, a Chantilly destination is considered local travel and thus not eligible for lodging reimbursement.
- E. The Secretary and his spouse attended a Smithsonian National Board (SNB) meeting in China in May 2004. Before returning to the United States, Mrs. Small took a side trip to Cambodia with the SNB, but without the Secretary. She later received reimbursement for that trip. The Secretary's employment agreement authorizes him to travel with his spouse at Smithsonian expense where her presence is appropriate. The Cambodia trip was taken by Mrs. Small alone.
- F. The Secretary received reimbursement for his membership in the Cosmos Club, which provides the option of spousal privilege. The Secretary opted to pay the spousal privilege fee and was reimbursed from the Smithsonian for the year 2000. The Secretary's employment agreement does not authorize spousal privilege at Smithsonian expense, and Mrs. Small was not an employee who would be entitled to such membership.
- G. The Secretary frequently worked through lunch or dinner with his staff and charged meal costs on these occasions. He also hosted a number of staff breakfasts. The costs of these meals were charged to Funds 401 and 402. FY 1999 Smithsonian guidance on the use of these funds (Use of Trust Funds for Representational and Special Event Expenses) states:

*Trust funds may not be used to cover costs of working luncheons involving only SI staff members.*

Further, it states:

*Smithsonian-provided meals are limited to occasions where they are judged essential to efficient, successful completion of the project.*

This guidance was updated on December 1, 2004, to state that trust funds can only be used for staff meetings and luncheons if "authorized for use by the Secretary...to support staff breakfast/lunch meetings." We classified all staff meal costs incurred before December 1, 2004, as unallowable.

- H. The Secretary was reimbursed in March 2000 for a December 8, 1999, lunch with a Smithsonian employee. The Secretary was not yet a Smithsonian employee in December. Therefore, the reimbursement is unallowable.
- I. Costs of alcoholic-beverages served at dinners hosted by the Secretary were paid out of the 401 Fund. The 1999 Use of Trust Funds for Representational and Special Event Expenses does not list alcoholic beverages as an allowable expense, while the 2004 version explicitly states that the 401 Fund cannot be used for alcoholic beverages.
- J. The Secretary was reimbursed for lunches with personal contacts. Those lunches were not hosted for Smithsonian business purpose. Therefore, reimbursement of personal contact lunches is not allowable.
- K. The Secretary awarded a \$4,812 cash bonus to the Executive Assistant to the Secretary in June 2000 to cover personal expenses. The Smithsonian bonus policy, Common Types of Incentive Awards, identifies two types of cash awards: cash awards for sustained superior performance and for special acts or services. The Executive Assistant's bonus did not qualify under either of these descriptions and is therefore unallowable.
- L. The Secretary purchased various gifts (such as flowers, plants, books, ties, and smithsonite) for Smithsonian employees, donors, and others. These gifts were charged against 401, 402, and 801 Funds. The 1999 Use of Trust Funds for Representational and Special Event Expenses does not list gifts as an allowable expense, while the 2004 version explicitly states that trust funds cannot be used for gifts for any purpose for Smithsonian staff, volunteers, donors, etc. Therefore, gift costs are unallowable.



**APPENDIX C**

**ACRONYMS USED BY THE SMITHSONIAN INSTITUTION**

Draft

APPENDIX C

ACRONYMS USED BY THE SMITHSONIAN INSTITUTION

| <b>Acronyms</b> | <b>Full Name</b>                      |
|-----------------|---------------------------------------|
| HMSG            | Hirshhorn Museum and Sculpture Garden |
| NASM            | National Air & Space Museum           |
| NMAH            | National Museum of American History   |
| NMNH            | National Museum of Natural History    |
| SAO             | Smithsonian Astrophysical Observatory |
| SBV             | Smithsonian Business Ventures         |
| SNB             | Smithsonian National Board            |

Draft

# EXHIBIT 22

921 -Fwd RE RE RE Smithsonian Expenditure Review Draft Report.txt  
From: Sprightley Ryan [Sprightley@oig.si.edu]  
Sent: Wednesday, December 06, 2006 8:33 AM  
To: Reed, Ellen P.; Yu, Hong; Hadley, Sam A.  
Subject: Fwd: RE: RE: RE: Smithsonian Expenditure Review Draft Report

Attachments: Transactions need business purpose 12 04 06.xls

>>> Lee, Yong 12/5/2006 4:13 PM >>>  
Hi Sprightley, Here's an amended spreadsheet with business purposes added.

The only information I don't have in the attached is the justification for the Palace Florist charges. Because they were carry-forward charges, I would have to put together all of their invoices to see which charges were paid when and to see what the carry-forward balances are. I will try to re-create this but might not be able to because we don't have copies of all of the invoices. I've already called Palace about these records but, unfortunately, they can't help because they've changed their accounting software and their historical data is not accessible any more... More than you wanted to know... So, net net, I'll get back to you re Palace charges.

Thanks, YL

-----Original Message-----

From: Ryan, Sprightley  
Sent: Monday, December 04, 2006 1:19 PM  
To: Davis, Leslie; Lee, Yong; Zino, Andrew  
Subject: Fwd: RE: RE: Smithsonian Expenditure Review Draft Report

Hello Yong and Leigh,

I'm sure you're thrilled that we're emailing you at this point, but could you please check the attached schedule and see if you can address their questions. You should read the whole email thread from bottom to top to make sense of it.

Thanks,  
Sprightley

>>> "Yu, Hong" <hyu@cottoncpa.com> 12/4/2006 1:12 PM >>>  
Hi Sprightley,

I talked to Ellen. She said yes to your recommendation and Andy's on donation. We will make the changes to our draft.

I put together information on the transactions that do not have adequate business purpose. I think we mentioned that some travel management sheets do not have business purpose on to Leslie when we met with her. However, I am not 100% sure because Charlene did the review of those transactions. Anyway, if Yong or Leslie is able to provide business purpose on any, we will be very happy to remove them from Schedule B-1.

Thanks,

Hong

-----Original Message-----

From: Sprightley Ryan [mailto:Sprightley@oig.si.edu]  
Sent: Monday, December 04, 2006 12:27 PM  
To: Yu, Hong  
Cc: Reed, Ellen P.  
Subject: RE: RE: Smithsonian Expenditure Review Draft Report

Page 1

<921>

Hong,

Maybe you could use a different characterization? Could you call it "inadequately [or insufficiently] documented business purpose"?

Also, for the travel where there was no business purpose on the travel management sheet, did Yong give you any alternative documentation or information? Maybe it would help if you could give a little more information on each one.

Thanks so much,  
Sprightley

>>> "Yu, Hong" <hyu@cottoncpa.com> 12/4/2006 12:16 PM >>>  
Hi Sprightley,

Andy is absolutely right on that Yong has provided business purpose for all items, even the ones that he could not locate invoices for. I went through the transactions identified as "undocumented business purpose" and noted that many of them are for travels that no business purpose was entered on the travel management sheet provided to us, a couple of them are forward balance for floral arrangements that we can not determine whom the balance was for, and the ones that have two invoices on one event. Please let us know if you would like more details on each of the transactions identified as "undocumented business purpose."

Thanks,

Hong

-----Original Message-----

From: Sprightley Ryan [mailto:Sprightley@oig.si.edu]  
Sent: Monday, December 04, 2006 10:41 AM  
To: Reed, Ellen P.; Yu, Hong  
Subject: Fwd: RE: Smithsonian Expenditure Review Draft Report

Thanks for your two emails.  
Here's one from Andy with some comments on the draft also.  
Thanks again,  
Sprightley

>>> Zino, Andrew 12/4/2006 9:53 AM >>>  
Sprightley,

I am "surprised" by the number of items in Schedule B-1 that are listed as "Undocumented business purpose". It was my understanding that Yong had supplied the business purpose for all items, even the ones we couldn't locate the invoices for. I think she will be "upset" with this listing of items.

On item C-1 where donations are discussed, I believe that the comment "The general ledger did not reflect receipts for 2 transactions totaling \$321" should actually read "The general ledger balance for donations did not reflect .....". The transactions got booked; I just didn't "go find them".

Andy

921 -Fwd RE RE RE Smithsonian Expenditure Review Draft Report.txt

-----Original Message-----

From: Ryan, Sprightley  
Sent: Friday, December 01, 2006 4:23 PM  
To: Maroni, Alice; Zino, Andrew; Metzger, Stuart; Gallus, Bruce  
Cc: Huerta, John  
Subject: Fwd: Smithsonian Expenditure Review Draft Report

>>> "Reed, Ellen P." <ereed@cottoncpa.com> 12/1/2006 1:54 PM >>>  
sprightley,

Attached is the revised draft report. Please let me know if you have  
any questions or comments.

Thanks,

Ellen

Ellen Reed

Cotton & Company, LLP

635 Slaters Lane, 4th Floor

921 -Fwd RE RE RE Smithsonian Expenditure Review Draft Report.txt  
Alexandria, VA 22314

(703) 836-6701

**From:** Lee, Yong [LeeY@si.edu]

**Sent:** Wednesday, December 06, 2006 12:14 PM

**To:** Yu, Hong

**Subject:** RE: Source for the business purpose

Hi Hong! The source for the lunches was the Secretary's calendar. The source for travel also was the Secretary's calendar, but in combination with individual itineraries that Leslie prepares for each trip.

Let me know if you have any other questions.

Regards, YL

---

**From:** Yu, Hong [mailto:hyu@cottoncpa.com]

**Sent:** Wednesday, December 06, 2006 12:07 PM

**To:** Lee, Yong

**Subject:** Source for the business purpose

Hi Yong,

Would you mind tell me that how you obtained business purpose for the lunches and travel transactions that we have been working on? We need to document the source of the business purpose.

Thanks.

Hong

<922>



Reed, Ellen P.

---

From: Sprightley Ryan [Sprightley@oig.si.edu]  
Sent: Wednesday, December 06, 2006 10:51 AM  
To: Reed, Ellen P.; Hadley, Sam A.  
Cc: Stuart Metzger  
Subject: car service, redux  
Attachments: Smithsonian AUP Draft Report 12-5-06 asr comments.doc



Smithsonian AUP  
Draft Report 1...

Sam and Ellen:

Thanks so much for the quick turnaround. I greatly appreciated receiving the revised draft yesterday. I'm now returning it to you with some suggested revisions to the text (visible in "track changes") as well as some comments embedded.

(1) Re: car service. As I mentioned to Ellen on the phone yesterday, I now believe even more strongly that use of car service by the Secretary (Gary Beer is another question entirely ...) should not be unallowable. I reached this conclusion not only for the reasons I set forth in my email of 12/3, but also because of the language in paragraph 5 of the representation letter that the Regents will sign and the identical language in paragraph 10 of the representation letter that the Secretary and CFO and Comptroller will sign:

"As party to the Secretary's employment agreement, we assert that the employment agreement was intended to allow the Secretary to be reimbursed for travel expenditures in excess of typical FTR limits, such as hotel daily ceilings AND GROUND TRANSPORTATION CHOICES, without requiring prior or specific justification and approval for those expenditures." (capitalization added)

Accordingly, if you agree that this language, along with the reading of the FTR and SI travel policy I gave you Sunday night, is sufficient, the whole category "A" of unallowed costs would be removed from Schedule B-2 (and the rest re-lettered, obviously).

(2) I understand that Hong is now working on some information that Yong just provided, which may result in the removal of a few some transactions from Schedule B-1.

(3) Any remaining issues I've noted in the draft.

Finally, I wanted to let you know that I asked Elena DeLeon to approve your request of last evening for the additional money (as well as the extension) for the contract.

Thanks so much for your forbearance.

-Sprightley

Reed, Ellen P.

---

From: Sprightley Ryan [Sprightley@oig.si.edu]  
Sent: Wednesday, December 06, 2006 10:59 AM  
To: Reed, Ellen P.; Hadley, Sam A.  
Cc: Stuart Metzger  
Subject: Fwd: car service, redux  
Attachments: Smithsonian AUP Draft Report 12-5-06 asr comments.doc



Smithsonian AUP  
Draft Report 1...

oops, forgot: the date on the draft needs to be changed, too; make it December 8? Do you think we will have it ready by then to give to the Secretary et al., in draft?

Thanks,  
Sprightley

>>> Sprightley Ryan 12/6/2006 10:50 AM >>>  
Sam and Ellen:

Thanks so much for the quick turnaround. I greatly appreciated receiving the revised draft yesterday. I'm now returning it to you with some suggested revisions to the text (visible in "track changes") as well as some comments embedded.

(1) Re: car service. As I mentioned to Ellen on the phone yesterday, I now believe even more strongly that use of car service by the Secretary (Gary Beer is another question entirely ...) should not be unallowable. I reached this conclusion not only for the reasons I set forth in my email of 12/3, but also because of the language in paragraph 5 of the representation letter that the Regents will sign and the identical language in paragraph 10 of the representation letter that the Secretary and CFO and Comptroller will sign:

"As party to the Secretary's employment agreement, we assert that the employment agreement was intended to allow the Secretary to be reimbursed for travel expenditures in excess of typical FTR limits, such as hotel daily ceilings AND GROUND TRANSPORTATION CHOICES, without requiring prior or specific justification and approval for those expenditures."  
(capitalization added)

Accordingly, if you agree that this language, along with the reading of the FTR and SI travel policy I gave you Sunday night, is sufficient, the whole category "A" of unallowed costs would be removed from Schedule B-2 (and the rest re-lettered, obviously).

(2) I understand that Hong is now working on some information that Yong just provided, which may result in the removal of a few some transactions from Schedule B-1.

(3) Any remaining issues I've noted in the draft.

Finally, I wanted to let you know that I asked Elena DeLeon to approve your request of last evening for the additional money (as well as the extension) for the contract.

Thanks so much for your forbearance.

-Sprightley

Reed, Ellen P.

---

From: Zino, Andrew [ZinoA@si.edu]  
Date: Friday, December 15, 2006 4:16 PM  
Subject: Sprightley@oig.si.edu  
RE: more work for you!

Attachments: Excel 2000



LMS REPAYMENT  
800.xls (22 KB)

Sprightley,

The \$800 credit item is already in the "below the line" items. See attached extract from the database indicating how it was reflected in the database. Even though it was a repayment from the Secretary, the voucher indicated "Occasions Reimb" so it appears under that name and not the Secretary's! We somehow came to the conclusion it was a below the line item and never "connected it" to the Secretary. Will wonders never cease!!! With a copy of what you sent me, Sam should be able to "delete" this item from the review. If you need anything else just holler.

Andy

PS WE have another issue in connection with the report based upon the "difference" of \$28,195 in CY 2004 as reported in housing allowance payments item # B-4. I will fill you in on Monday.

-----Original Message-----

From: Ryan, Sprightley  
Date: Friday, December 15, 2006 2:24 PM  
To: Zino, Andrew  
Subject: more work for you!

Andy,  
Just got off the phone w/Cotton & Co., and am headed out the door for an out-of-office meeting.

On Wednesday, Yong provided me with documentation that the Secretary reimbursed the Institution for the \$800 lunch on May 15, 2000 that was personal. According to the documents, he repaid by check on June 29, 2000, and there is an "Input Voucher" showing the entry of the check. What Sam wants to know is if there is a credit entry or whatever that they can look at (much like all those credits we put "below the line" awhile back) so that they could take this whole transaction out of their review \* it's not really an expense transaction if it's cancelled out by the reimbursement. I will leave a copy of the documentation for you at our front desk.

THanks,  
Sprightley

6924

Reed, Ellen P.

---

From: Sprightley Ryan [Sprightley@oig.si.edu]  
Sent: Thursday, December 21, 2006 9:16 AM  
To: Reed, Ellen P.; Hadley, Sam A.  
Stuart Metzger  
Subject: Fwd: Special review

>>> Zino, Andrew 12/21/2006 9:13:50 AM >>>  
Sprightley,

We have discovered the "problem" behind the "missing" housing allowance amounts in FY 2004. It turns out that NFC "miscoded" two housing allowance payments to the regular salary line of the Secretary's Earnings and Leave Statement (E & L). We have the documentation from NFC which indicates this "miscoding" on their part. The "really strange" part of this is that the miscoded amounts don't show up as "visible entries" on the E & L and only "show up" in the following E & L statement in the year-to-date amounts. Unless you reviewed and recalculated your year-to-date amounts, you would never know that anything had been added to those amounts other than the currently indicated pay period amounts. This is amazing that NFC would "process" a transaction in that manner. We are preparing a schedule and documentation package for you and the Secretary's office on this issue.

Based upon this "resolution", there is no need for the Secretary to file an amended return since all the \$'s were included on his W-2, albeit, not in the right line items. Since all of the payments are taxable in any event, this is not cause for making any adjustments.

andy

**Reed, Ellen P.**

---

**From:** Sprightley Ryan [Sprightley@oig.si.edu]  
**nt:** Friday, December 22, 2006 11:04 AM  
**o:** Reed, Ellen P.; Hadley, Sam A.  
**bject:** Fwd: Secretary's 2004 P/R Reconciliation

**Attachments:** Small.xls



Small.xls (28 KB)

>>> Zino, Andrew 12/22/2006 11:02 AM >>>  
Sprightley & Yong,

Attached is a schedule that reconstructs the Secretary's entire payroll for calendar 2004. It "proves" that he did receive all of his housing allowances, all income was reported, and that his W-2 is correct for that year. Classification of the payments is "incorrect", as previously discussed, but has no real bearing on his tax position. If you require any additional info on this issue, kindly let me know. Thanks.

Andy

**Reed, Ellen P.**

---

**From:** Lee, Yong [LeeY@si.edu]  
**Sent:** Friday, December 22, 2006 4:44 PM  
**To:** Yu, Hong; Reed, Ellen P.  
**Cc:** Ryan, Sprightley  
**Subject:** revised housing allowance worksheet  
**Attachments:** Housing Allowance FY00 to 05 as of 12.22.06.xls

Hello! Sprightley let me know you would remove mention of the unallowables (capital improvements) in the Secretary's housing allowance review if I would send you a revised worksheet without the unallowable elements. I have done so and have attached here. The cells I modified are highlighted. Please let me know if you need anything else.

Happy holidays!

Thanks, YL

1/10/2007

928

**Reed, Ellen P.**

---

**From:** Sprightley Ryan [Sprightley@oig.si.edu]  
**Date:** Monday, December 04, 2006 7:27 AM  
**Subject:** Reed, Ellen P.; Hadley, Sam A.  
Re: Secretary's Expenses Review \* Second Thoughts

Sam,

On the Secretary's expense review:

Point well taken. I apologize if I spoke out of school. I just thought that I would have to give guidance, like I did, for example, on the applicability of the travel policy to the Secretary and to Gary Beer. In this case, it would be on the interpretation of the travel regs, which say (like the FTRs do) that "special conveyances may be authorized," and which have lots of wiggle room as to what should be considered ("other factors" in addition to cost; "practicable and commensurate with the nature and purpose of the trip" and the choice must take into account, among other things, "lost work time").

I eagerly await your decision.

On another point, Alice is concerned about the characterization of the Mrs. Small's trip to Cambodia, because it sounds like she went off on a lark, rather than to accompany Smithsonian National Board members. It is nonetheless (clearly) unallowable, but if you were provided documentation as to this purpose (were you?), it would seem appropriate to mention it.

On yet another point, Alice once again pointed to the language in the 401 allocation memos about the Secretary (starting with the 12/4/03 one) stating that "In addition to general authorized use of allocated central trust funds for representational and special event purposes, these funds are also available to the Office of the Secretary to carryout [sic] official duties." So it would seem that he was at least intended to be able to buy cigars, alcohol, etc., at least beginning then.

Do be in touch.

On the SBV side of things . . . I have been asking almost every day for that final schedule. I will try again today.

Thanks,  
Sprightley

>>> <shadley@cottoncpa.com> 12/4/2006 5:16 AM >>>  
Sprightley,

Cotton will ponder it some more, and I will inquire with others here (when auditing big wigs). I think it might have been better to express your concerns to us and OIG staff, before involving SI staff. I still think this is a decision that Cotton has to make, specifically without influence (but not information) from the auditee. While I realize that Andy and Alice are npt specifically who we are reviewing, I just think you hired us to make that determination.

Anyway, on another flight this morning, but I will gather some any background that I can find.

Thanks,

Sam

Text via BlackBerry from Cingular Wireless

-----Original Message-----  
From: "Sprightley Ryan" <Sprightley@oig.si.edu>

<935>

Date: Sun, 03 Dec 2006 23:00:07

To: <ereed@cottoncpa.com>, <shadley@cottoncpa.com>, "Bruce Gallus"  
<bgallus@oig.si.edu>, "Stuart Metzger" <smetzger@oig.si.edu>, "Alice Maroni"  
<MaroniA@si.edu>, "Andrew Zino" <ZinoA@si.edu>  
Subject: Secretary's Expenses Review \* Second Th oughts

I've been re-reading the draft AUP and thinking a lot about it over this weekend. I am not completely comfortable with calling the Secretary's car service expenses unallowable. Given his position, the value of his time, the uncertainties in reliably getting other modes of transportation (e.g., cabs in New York City on a rainy day), and the possibility of giving rides to donors, I think that car service may be "most advantageous to SI when cost and other factors are considered." Before I decide, however, I would like to get more detail on a small sample of these expenses (e.g., the \$1421 11/1/04 transaction) to find out the number and types of trips represented by amounts such as these.

We'll talk in the morning.

Thanks,  
Sprightley



# EXHIBIT 23



# Smithsonian Institution

Board of Regents

December 7, 2006

Chief Justice  
of the United States,  
Canceller

Sam Hadley, CPA, CGFM  
Partner

Vice President  
of the United States,  
Richard B. Cheney

Cotton & Company LLP  
635 Slaters Lane, 4<sup>th</sup> Floor  
Alexandria, VA 22314

The Honorable  
Thad Cochran

Dear Ms. Hadley:

The Honorable  
Bill Frist, M.D.

In connection with your agreed-upon procedures engagement to review the compensation and expenses of the Secretary of the Smithsonian Institution for fiscal years 2000 through 2006, we confirm, to the best of our knowledge and belief, the following representations made to you during your engagement:

The Honorable  
Patrick J. Leahy

1. We have fully disclosed our objectives for this review.
2. We acknowledge responsibility for determining the appropriateness of the procedures to ensure that our objectives are met.
3. We acknowledge responsibility for selecting the transactions for your review (identified on the Schedule of Expenditures, Schedule of Housing Allowances, Schedule of Compensation, and Schedule of Donations) and for ensuring that those transactions meet our objectives. We understand that you have not reviewed the Schedule of Expenditures or Schedule of Housing Allowances for completeness or to ensure that the selected transactions meet our objectives.
4. As party to the Secretary's employment agreement, we assert that the employment agreement was intended to compensate the Secretary for imputed mortgage interest, rather than to limit the compensation to actual mortgage interest incurred. The employment agreement states:

The Honorable  
Xavier Becerra

The Honorable  
Sam Johnson

The Honorable  
Ralph Regula

Eli Broad

Anne d'Harnoncourt

Phillip Frost, M.D.

Shirley Ann Jackson

Art P. Kogod

Walter E. Massey

Roger W. Sant

Alan G. Spoon

Patricia Q. Stonesifer

The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance not to exceed \$150,000<sup>1</sup> per year in compensation for up to fifty percent (50%) of the actual costs of his housing. Payment of these funds will be made by the Smithsonian to the Secretary monthly upon his presentation monthly of records of housing operating and

<sup>1</sup>The housing allowance ceiling is adjusted annually. The amount shown here represents the amount from the initial agreement.

Smithsonian Institution Building  
1000 Jefferson Drive SW  
Washington DC 20560-0016  
Tel: (202) 633-1869  
Fax: (202) 786-2515

1/2  
600

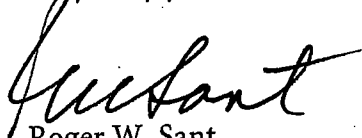
maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures.

5. As party to the Secretary's employment agreement, we assert that the employment agreement was intended to allow the Secretary to be reimbursed for travel expenditures in excess of typical FTR limits, such as hotel daily ceilings and ground transportation choices, without requiring prior or specific justification or approval for those expenditures. The employment agreement states:

The Smithsonian will provide for the Secretary's reimbursement for reasonable cost for official travel and official entertainment, consistent with its policies for such expenditures. The Secretary is authorized to fly first class. The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence is appropriate. The Smithsonian will also provide a suitable car and driver for transportation to local official functions; this is not to include daily commuting between home and work.

6. We know of no fraud involving Smithsonian employees related to these transactions.

Very truly yours,



Roger W. Sant  
Chairman, Executive Committee  
Smithsonian Board of Regents

Source - Smithsonian Board of Regents  
Purpose - To obtain management representations  
Scope - Reviewed and verified that management made all requested representations.  
Conclusion - All requested representations were made.

# EXHIBIT 24



# Smithsonian Institution

January 4, 2007

Sam Hadley, CPA, CGFM  
Partner  
Cotton & Company LLP  
635 Slaters Lane, 4<sup>th</sup> Floor  
Alexandria, VA 22314

Dear Ms. Hadley:

In connection with your agreed-upon procedures engagement to review the compensation and expenses of the Secretary of the Smithsonian Institution for fiscal years 2000 through 2005, we confirm, to the best of our knowledge and belief, the following representations made to you during your engagement (those representations applicable to all parties are confirmed by all parties, and those that are applicable only to individuals are confirmed only by those individuals, as applicable):

1. We acknowledge responsibility for determining the appropriateness of the procedures to ensure that our objectives are met.
2. We are responsible for selecting the transactions for your review (identified on the Schedule of Expenditures, Schedule of Housing Allowances, Schedule of Compensation and Schedule of Donations) and for ensuring that those transactions meet our objectives. We understand that you have not reviewed the Schedule of Expenditures or Schedule of Housing Allowances for completeness or to ensure that the selected transactions meet our objectives.
3. We understand that you identified transactions that were either unsupported or not spent in accordance with Smithsonian policies, but that you did not calculate the portion of the transaction that represents unallowable costs such as travel costs incurred in excess of Smithsonian policies. Additionally, we understand that you did not test the reasonableness of the calculations of imputed home mortgage interest because calculations are based on assumptions provided by us (such as historical interest rates and home market values) outside of your expertise.
4. We have made available to you all relevant records related to the Secretary's expenditures, donations, housing expenses, and income, and have not withheld from you any records or related data that in our judgment would be relevant to your engagement.
5. We have identified and provided to you all relevant laws, policies, procedures, guidance, opinion letters, and the like, that govern the transactions covered by your review.

600-staff

6. We have identified no matters contradicting the materials we have provided to you or the assertions we have made to you, except for those that we have disclosed to you.
7. We have responded fully to all inquiries made to us by you during the engagement.
8. All amounts reported on the Schedule of Housing Allowance represent actual expenditures incurred solely for the primary residence of the Secretary, and were incurred for the purposes identified on the Schedule or supporting invoice. All expenditures reported were both necessary and reasonable housing expenditures and not capital improvements (as identified in the employment agreement).
9. As party to the Secretary's employment agreement, we assert that the employment agreement was intended to compensate the Secretary for imputed mortgage interest, rather than to limit the compensation to actual mortgage interest incurred. The employment agreement states:

"The Secretary shall make his personal residence available for official Smithsonian hospitality and will receive a housing allowance not to exceed \$150,000<sup>1</sup> per year in compensation for up to fifty percent (50%) of the actual costs of his housing. Payment of these funds will be made by the Smithsonian to the Secretary monthly upon his presentation monthly of records of housing operating and maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures."

10. As party to the Secretary's employment agreement, we assert that the employment agreement was intended to allow the Secretary to be reimbursed for travel expenditures in excess of typical FTR limits, such as hotel daily ceilings and ground transportation choices, without requiring prior or specific justification and approval for those expenditures. The employment agreement states:

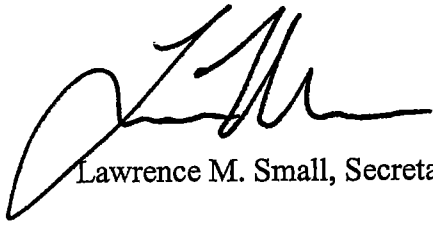
"The Smithsonian will provide for the Secretary's reimbursement for reasonable costs for official travel and official entertainment, consistent with its policies for such expenditures. The Secretary is authorized to fly first class. The Secretary also is authorized to travel with his spouse at Smithsonian expense where her presence is appropriate. The Smithsonian will also provide a suitable car and driver for transportation to local official functions; this is not to include daily commuting between home and work."

---

<sup>1</sup> Housing allowance ceiling is adjusted annually. Amount shown here represents amount from the initial agreement.

11. We know of no fraud involving Smithsonian employees related to these transactions.

Very truly yours,



Lawrence M. Small, Secretary



Alice C. Maroni, Chief Financial Officer



Andrew J. Zino, Comptroller

Purpose: To obtain management representations  
Source: Lawrence Small, Secretary, Smithsonian Institution  
Alice Maroni, CFO, Smithsonian Institution  
Andrew Zino, Comptroller, Smithsonian Institution  
Scope: Reviewed and verified that management made all requested representations  
Conclusion: The management made all requested management representations

# EXHIBIT 25





# Smithsonian Institution

~~CONFIDENTIAL~~

January 16, 2007

Audit and Review Committee  
Board of Regents  
Smithsonian Institution  
Washington, D.C. 20560

Dear Members of the Audit and Review Committee:

Attached please find the Independent Accountant's Report on Applying Agreed-Upon Procedures to a review of the Secretary's expenses, compensation, and donations for 2000 through 2005, which was conducted at the Secretary's and your request.<sup>1</sup>

In this transmittal we offer comments and recommendations based on our oversight of the independent accountant's review, focusing on the Secretary's expenses. We note those transactions that we believe the Regents could find to be appropriate, even if the transactions did not strictly comply with Institution policies, as well as those that we believe the Regents could find inappropriate. In our view, the Institution would benefit from providing more specific guidance on expenses. In addition, we offer some observations on the Secretary's employment agreement and suggest that it be revised.

Our comments follow the order of the attached report.

### *The Secretary's Expenses*

As a trust instrumentality of the United States and as a charitable organization under the Internal Revenue Code, the Smithsonian must ensure that expenses incurred by individuals in carrying out its mission are reasonable. The Smithsonian must also ensure that such expenses are properly documented; that they are for a Smithsonian purpose and not for personal benefit; and that they are not lavish or extravagant.

Overall, we saw no evidence of fraud or abuse associated with the expense transactions reviewed. We also saw no evidence that the expenses reviewed were solely for personal benefit. All the transactions for which there was support had a Smithsonian business purpose. However, many transactions were not properly documented or were not in accordance with Smithsonian policies. Additionally, some transactions might be considered lavish or extravagant.

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<sup>1</sup> A separate report on a review of the expenses and compensation of the Chief Executive Officer of Smithsonian Business Ventures is forthcoming.

*Unsupported or Inadequately Supported Expense Transactions (Schedule B-1)*

Only 42 (or 4%) of the 1,040 transactions reviewed (totaling \$846,312.34) had inadequate support (documentation);<sup>2</sup> out of those 42, only 12 (or 1%, worth \$7,108.89) had no support at all. We note that where there is no support or inadequate support for the expense, there may be tax consequences to the Secretary.

- Accordingly, we recommend that the Board of Regents ask the General Counsel to review the tax implications, if any, of the Institution reimbursing unsupported and inadequately supported expenses.

*Unauthorized Travel Transactions (Schedule B-1)*

The report identifies nine travel transactions (related to four trips) as unauthorized. Six of these transactions involved a single, round-trip charter flight to San Antonio, Texas (totaling \$14,509.40), where the Secretary attended the opening of an affiliate museum and a function held by a potential major donor and then needed to return for a Board of Regents meeting.<sup>3</sup> While the trip had a legitimate Smithsonian purpose and the charter flight ensured that the Secretary would arrive back in time for the Regents, the use of a charter flight was not authorized by his employment agreement or any Smithsonian policy and we therefore believe the cost was excessive. First-class roundtrip airfare – to which the Secretary is entitled under his employment agreement – between Washington, D.C. and San Antonio, Texas, at that time was approximately \$2,000.<sup>4</sup>

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<sup>2</sup> The majority (34 out of 42) of these transactions date from fiscal years 2000 and 2001. It is not surprising that some percentage of records could not be located, given the time elapsed, the relocation of the Office of the Comptroller (including its voluminous and at that point poorly organized records) in 2000, and the turnover in personnel since then.

<sup>3</sup> We note that a *Washington Post* account a few months after the trip cites an Institution spokesperson as saying that the Secretary paid for the trip from a discretionary fund with his own money. That characterization is inaccurate. The trip was paid for with Smithsonian funds. It is true that the Secretary has been very generous in his donations to the Institution (he gave almost \$430,000 in cash and securities in the period covered by the review), and these donations are allocated to a discretionary trust fund from which he may make expenditures on behalf of the Institution. However, once an individual has donated money to the Institution (and taken any resulting tax benefit), the donation becomes the property of the Institution and is subject to expenditure guidelines for "reasonableness" and other limitations flowing from the Institution's status as a trust and a 501(c)(3) organization. If the Secretary had paid for the charter flight with his own funds, the expenditure would not be subject to these restrictions, but it also could not be claimed as a charitable donation.

<sup>4</sup> Two other transactions did not involve excessive expenditures. One involved a charter flight from Washington, D.C. to Pennsylvania (\$1,348.75) for a Smithsonian-related function, and that flight may not have cost much more than a commercial flight and attendant ground transportation to the area. The other was an overnight stay at a motel (\$67.06) near Dulles Airport when the Secretary was attending numerous functions related to the opening of the Udvar-Hazy Center.

- Accordingly, we recommend that the Board of Regents consider whether the Secretary's use of the charter flight was reasonable under the circumstances and if it was not, ask the Secretary to reimburse the Institution for the difference between first-class airfare and the cost of the charter flight, and ask the General Counsel to review the tax implications, if any, of reimbursing the cost of the charter flight.

The other travel transaction of concern is a reimbursement to the Secretary's wife for a trip she took to Cambodia with Smithsonian National Board members. Again, the trip clearly had a legitimate Smithsonian purpose, and we note that Smithsonian travel policy does allow the Institution to pay the travel costs of spouses of Smithsonian employees who are traveling to attend an official function "if their services in an official capacity can be demonstrated in advance." The independent accountant, however, was not provided with evidence of prior authorization or approval. We also note that the Institution's reimbursement of the Secretary's wife's travel expenses in this instance, and possibly in all instances, may have tax implications.

- Accordingly, we recommend that the Board of Regents ask the General Counsel to review the tax implications, if any, of reimbursing the Secretary's wife's travel expenses.

#### *Unauthorized Non-Travel Transactions (Schedule B-2)*

The independent accountant's report lists approximately 200 transactions (totaling \$67,865.40) as unauthorized non-travel costs, or 8% of the cost of all expense transactions reviewed. The majority of these transactions arguably were not inappropriate. Specifically, all but approximately \$5,700 of these non-travel transactions, while not allowed under then-existing Smithsonian policies, would be authorized under current policy or if a different category of Trust funds had been used. The expenditures were for Smithsonian purposes, and were not for personal benefit. Smithsonian policies at the time, however, were either ambiguous or did not necessarily recognize the purpose involved. According to the Secretary's staff, they believed that all these expenditures were allowed under Smithsonian policy or that the Secretary could waive any policy if it applied.<sup>5</sup>

There were 15 transactions (totaling \$2,679.73) involving the use of the Institution's "401 funds" (a type of Trust fund) for the purchase of alcoholic beverages for official Smithsonian functions prior to issuance of the new policy governing the expenditure of Trust funds in December 2004. Before that time, the policy was silent on the purchase of alcoholic beverages. The new policy allows the Secretary and other specified staff to purchase alcoholic beverages for official occasions using the Institution's "402 funds."

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<sup>5</sup> We are aware of no written authority for the Secretary to waive Smithsonian policies.

The independent accountant notes 104 transactions (totaling \$45,140.78) involving staff breakfasts and other meals with staff that the Secretary hosted through November 2004, which, according to the Secretary's staff, were working meals or staff morale-building occasions. In December 2004, Institution policy governing the expenditure of Trust funds was explicitly changed to authorize such expenditures by the Secretary.<sup>6</sup> Thus, currently, these expenditures are allowed. We note, however, that there is no guidance that would help ensure that expenditures for these meals are kept within reasonable limits. In some instances, in our view, the cost of staff meals listed in the report might exceed what would be prudent under the circumstances. We also note that the policy on the expenditure of trust funds is an attachment to a trust fund allocation memo, rather than a Smithsonian Directive, the form Institution policies of long-term significance take.

The independent accountant also lists 66 gift transactions (totaling \$14,387.89) as unauthorized. As noted in the report, Institution policy does not permit the expenditure of Trust funds for gifts and therefore the expenses were unauthorized. While generally that rule is appropriate, we believe the Regents should consider authorizing the Secretary (and perhaps other Institution executives involved in development, such as directors of museums and other programs) to spend Trust money on gifts for donors and board members in gratitude for their generosity and service to the Institution, so long as those gifts are not lavish or extravagant. Such gifts strengthen relationships with donors, potential donors, board members, and volunteers. Some gifts to employees may also be appropriate, as they enhance employee morale. However, we also believe that there should be limits on gifts to employees and that those limits should be spelled out in appropriate guidance. For example, gifts could be restricted to the retirement of long-time employees or condolence flowers or memorial contributions on the death of an employee. In all instances, the Institution should be acknowledged as the source of the donation or gift. In addition, we note that, as with the expenditures on meals, some of the gifts listed in the report appear to be lavish.

- Accordingly, we recommend that the Board of Regents consider reviewing the transactions involving meals with staff and the purchase of alcoholic beverages for official functions to determine whether reimbursement would be warranted, recognizing that current Smithsonian policies would permit these expenditures.
- We also recommend that the Board of Regents direct the Institution to revise its policy governing the expenditure of Trust funds to allow the Secretary and other officials to use such funds for token gifts on behalf of the Institution to donors, board members, and volunteers, and for token gifts to employees on limited occasions; and to direct the Institution to develop a Smithsonian Directive, with Board of Regents approval, providing guidance on appropriate levels of expenditures for these purposes.

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<sup>6</sup> There were six occasions on which the Secretary had the Institution pay for personal lunches, but the Secretary reimbursed the Smithsonian for the full amount (\$700) on December 12, 2006, as well as for a spousal privilege fee (\$33.50) at the Cosmos Club that was reimbursed erroneously in 2000.

Finally, we note that there was a \$4,811.50 cash award in 2000 to an assistant to the Secretary that the independent accountant lists as unauthorized. Evidence provided to the independent accountant indicated that the purpose for the award did not meet Smithsonian standards for the granting of such awards, and no documentation was provided demonstrating otherwise.

*The Secretary's Employment Agreement*

The terms of the Secretary's employment agreement posed numerous challenges to the review of his expenses and, in particular, of his housing allowance. To avoid similar issues in the future and, more importantly, to clarify the agreement's terms, we suggest that the Board of Regents and the Secretary revisit the agreement, with the assistance of the Institution's General Counsel.

*Travel Provisions*

The Secretary's employment agreement explicitly authorizes the Secretary to fly first-class and states that Smithsonian travel policies – which follow the Federal Travel Regulation (FTR) – otherwise apply. Thus, on its face the agreement does not appear to allow the Secretary to exceed FTR limits on hotel charges and apparent limits on using car services. But the Secretary's travel costs did not always come within those limits.<sup>7</sup> The representation letters to the independent accountant nonetheless established that the parties to the agreement (the Secretary and Board of Regents through its Executive Committee) believe that the agreement entitled him to premium travel in all regards, not just premium air fare. The independent accountant therefore did not ultimately categorize the expenditures for car service and premium hotel accommodations as unauthorized. While we do not suggest the Secretary be subject to the FTR (or limits other than his travel expenses should further the Institution's mission and not be lavish or extravagant),<sup>8</sup> we believe there should be greater clarity and accountability.

- Accordingly, we recommend that the Board of Regents consider amending the Secretary's employment agreement to specify what level of travel service the Secretary is entitled to and what limitations, if any, should apply to his travel-related costs.

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<sup>7</sup> For example, the Secretary spent approximately \$27,000 on car service while on travel over the course of the 6-year review period.

<sup>8</sup> We note that the Panel on the Nonprofit Sector's Summer 2005 Report to Congress and the Nonprofit Sector opposes limiting amounts paid by charitable organizations for travel, meals and accommodations to the federal government rate because doing so "would place an unreasonable barrier to many activities of [an] organization."

### *Housing Allowance Provisions*

The Secretary's employment agreement also provides him with a housing allowance, as historically the Institution has provided its Secretary with a house and expects the Secretary to use it for official Smithsonian hospitality. As with the provisions having to do with travel, it appeared that the literal language of two provisions of the agreement was not followed: that the allowance is not to exceed a specified amount "in compensation for up to fifty percent (50%) of the actual costs of his housing;" and that payment will be made upon the Secretary's "presentation monthly of records of housing operating and maintenance expenditures including but not to be limited to: homeowner's insurance, utilities, ordinary maintenance and cleaning, grounds service, real estate taxes, mortgage interest or equivalent costs of home ownership, etc., but not capital expenditures."

We understand that for administrative ease, the Regents, a few months after the Secretary's arrival, ceased requiring monthly records of the Secretary's housing expenditures but did not amend the employment agreement accordingly. The Regents treated the allowance payments – which increased each year with his salary – as if they were lump-sum payments due in the same manner as his salary. As a result, when this review began, the monthly records of actual expenses had to be assembled for the independent accountant's review.

Further, the most significant housing expense listed is the Secretary's hypothetical mortgage interest, which is characterized as an equivalent cost of home ownership.<sup>9</sup> The agreement does not explain how this imputed interest would be calculated. The independent accountant did not review the underlying assumptions or otherwise verify the resulting numbers. Yet those costs were the largest portion of the total housing allowance expenses. With different assumptions, it is possible the Secretary's costs would not have met the threshold necessary to receive the full amount of the housing allowance.<sup>10</sup>

- Accordingly, we recommend that the Board of Regents consider revising the Secretary's employment agreement to make the housing allowance a single yearly payment with no documentation of expenses or minimum amount required to qualify for the allowance; or, specify more clearly in the agreement what costs qualify for the allowance and what recordkeeping and reporting are required.

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<sup>9</sup> In their representation letters to the Independent Accountant, the parties to the agreement stated that they intended the Secretary's imputed mortgage interest to be an actual cost of housing that would count toward his housing allowance.

<sup>10</sup> For example, had an adjustable rate mortgage been used to impute the mortgage interest, the overall costs could have been lower. The calculations prepared by the Office of the Secretary used a 30-year fixed rate mortgage rate of 8.32 percent from January, 2000. In 2000, the average 1-year ARM was 7.04 percent, and interest rates declined steadily to an average of 3.90 percent in 2004, then increased in 2005 to 4.49 percent. Alternatively, refinancing might have been an option; average 30-year fixed mortgage rates declined significantly from 2000 (when they averaged 8.05 percent) through 2005 (when they averaged 5.87 percent).

Recordkeeping Practices

Finally, as a result of this review, it became apparent that the recordkeeping practices of the Secretary's office and the Office of the Comptroller need to be refined to allow for the separate tracking and categorizing of the Secretary's expenses. The records of the Secretary's expenses were not segregated from those of the Secretary's office as a whole (for such expenditures as office products; travel for the Regents; furniture and other items for the Castle; and the like). It was therefore initially difficult to determine which expenditures were attributable to the Secretary, find supporting documentation going back 7 years, and decide what types of expenditures were involved without having to look at the original receipts and other voluminous support.

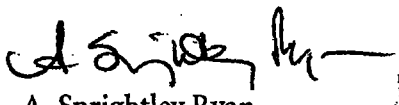
Recognizing these problems, the Office of the Secretary, working with the Office of the Comptroller, the Office of the Chief Information Officer and our office, has already implemented a new coding system to track and categorize the Secretary's expenses more methodically beginning in fiscal year 2007.

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Beginning this year, this office will conduct annual reviews of the Secretary's expenses. In an era of severe budget constraints and of congressional and public scrutiny of nonprofit executive compensation and expenses, reviews such as this one help assure that the Smithsonian is using its limited assets prudently and solely for the benefit of the Institution's mission. Examining the Secretary's expenses increases transparency and accountability and will thereby strengthen the trust and confidence of the public, Congress, and donors in the Institution.

We look forward to your responses to our recommendations. Please do not hesitate to call me on 202.633.7095 if you have any questions or would like any further information.

Very truly yours,



A. Sprightley Ryan  
Acting Inspector General

cc Lawrence M. Small, Secretary  
Sheila P. Burke, Deputy Secretary and Chief Operating Officer  
John E. Huerta, General Counsel  
Alice C. Maroni, Chief Financial Officer  
Andrew J. Zino, Comptroller  
James M. Hobbins, Executive Assistant to the Secretary

# EXHIBIT 26





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## INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

December 22, 2006

To the Audit and Review Committee of the Smithsonian Board of Regents:

Cotton & Company LLP performed the procedures enumerated below, which were agreed to by the Smithsonian Institution Office of the Inspector General and the Institution's Chief Financial Officer, solely to assist you in evaluating compensation of the Secretary of the Smithsonian Institution and in determining if travel and other reimbursable expenditures incurred by the Secretary were reasonable in the context of a business expense related to the Smithsonian mission. The Smithsonian was responsible for preparing the four schedules provided for our review: Schedule of Expenditures of the Office of the Secretary, Schedule of Compensation for the Secretary of the Smithsonian Institution, Schedule of Housing Allowances for the Secretary of the Smithsonian Institution, and Schedule of Donations from the Secretary to the Smithsonian Institution.

We conducted this agreed-upon procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of procedures described below either for the purpose for which this report has been requested or for any other purpose.

### OBJECTIVES

The Smithsonian identified its overall objectives as follows:

1. Determine if transactions included on the Schedule of Expenditures were properly supported.
2. Determine if transactions included on the Schedule of Expenditures were valid business expenses related to the Smithsonian mission or were not incurred in accordance with Smithsonian policies and guidance.
3. Verify total compensation paid to the Secretary of the Smithsonian, to include, if applicable:
  - Salary
  - Bonuses
  - Benefits
  - Housing allowances
  - Honoraria
  - Loans or cash advances
  - Housing or relocation expenses

- Automobile allowances
  - Other remuneration or compensation, including severance and deferred compensation
4. Verify the total amount of donations or securities contributions made by the Secretary to the Institution.
  5. Verify the total amount of related matching gifts associated with the Secretary's donations to the Smithsonian.

#### **BACKGROUND AND SCOPE**

The Secretary of the Smithsonian, on behalf of the Audit and Review Committee of the Board of Regents, requested an independent third-party review of the Secretary's expenditures and compensation. The Smithsonian contracted with Cotton & Company to review the Schedules of Expenditures, Compensation, Housing Allowances, and Donations prepared by the Smithsonian's Chief Financial Officer (CFO). The period of the agreed-upon procedures was Fiscal Years (FYs) 2000 through 2005.

To gain an understanding of the requirements of this agreed-upon procedures engagement, Cotton & Company met with the acting Inspector General (IG) and senior managers from other Smithsonian organizations on July 26, 2006, and on subsequent dates as necessary. We reviewed schedules prepared by the Smithsonian Office of the Chief Financial Officer, as well as the supporting documentation. We also interviewed Smithsonian officials who assist with daily administration and operation of the Secretary's office.

In addition, we reviewed policies and procedures, references, handbooks, and memorandums provided by the Smithsonian as guidance to assist us in performing the agreed-upon procedures (See Appendix A for a comprehensive list of references and guidance.) To the extent that the Secretary's employment agreement did not address, or was ambiguous regarding, reimbursement of certain expenditures, we obtained clarification from the Secretary's office and the Board of Regents on the intent of that agreement. We provided periodic status updates to the acting IG and Smithsonian staff, as well as the draft report documenting the results of our agreed-upon procedures.

#### **AGREED-UPON PROCEDURES AND RESULTS**

##### **A-1. Trace all expenditures reported on the Schedule of Expenditures<sup>1</sup> to source documentation to determine if expenditures were properly supported.**

The Smithsonian provided adequate documentation to support 998 of the 1,040 transactions we reviewed. Documentation could not be located for 12, and available documentation for the other 30 was not adequate to substantiate the business validity of the transaction. These unsupported transactions are identified in Schedule B-1. We classified the supported transactions as either travel reimbursement or other, as follows:

---

<sup>1</sup> The Schedule of Expenditures was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

| <b>Cost Category</b> | <b>Number of Transactions</b> | <b>Dollar Value of Transactions</b> |
|----------------------|-------------------------------|-------------------------------------|
| Travel               | 260                           | \$298,735.28                        |
| Other                | 738                           | 519,011.48                          |
| Unsupported          | 42                            | 28,565.58                           |
| <b>Total</b>         | <b>1,040</b>                  | <b>\$846,312.34</b>                 |

**A-2. Review supporting documentation for all transactions identified on the Schedule of Expenditures to identify expenses not fulfilling the Smithsonian mission or not incurred in accordance with Smithsonian policies and guidance provided by Smithsonian staff.**

Smithsonian policies and guidance provided to us are listed in Appendix A. We identified unauthorized transactions totaling \$89,554.61 that were not incurred within limits prescribed by Smithsonian policies and guidance or that did not appear necessary to fulfill the Smithsonian mission. Detail for those transactions and the reason why each item was identified as unauthorized is provided in Schedule B-2.

**B-1. Trace amounts reported on the Schedule of Compensation<sup>2</sup> to taxable wage amounts reported on IRS Forms 990 (Non-Profit Tax Returns), Smithsonian's Statements of Earnings and Leave, Secretary's IRS Form W-2s (Record of Compensation), and employment agreement.**

Amounts shown on the Schedule of Compensation were supported by Smithsonian Statements of Earnings, IRS Form W-2s, and employment agreement. Amounts reported on the W-2s reconciled to the Smithsonian's Statement of Earnings and Leave, both of which are on a *calendar year* basis. Amounts reported on the Smithsonian's Statement of Earnings and Leave converted to a *fiscal year* basis did not, however, reconcile to taxable wage amounts reported on the Forms 990 for several fiscal years, as follows:

|                                  | <b>FY 2000</b> | <b>FY 2001</b> | <b>FY 2002</b>  | <b>FY 2003</b> | <b>FY 2004</b>    | <b>FY 2005</b> |
|----------------------------------|----------------|----------------|-----------------|----------------|-------------------|----------------|
| Taxable wage amounts on Form 990 | \$356,700      | \$655,904      | \$746,069       | \$746,713      | \$790,440         | \$819,323      |
| Statement of Earnings and Leave  | <u>356,700</u> | <u>649,176</u> | <u>731,947</u>  | <u>745,606</u> | <u>827,196</u>    | <u>819,322</u> |
| Difference                       | <u>\$0</u>     | <u>\$6,728</u> | <u>\$14,122</u> | <u>\$1,107</u> | <u>\$(36,756)</u> | <u>\$1</u>     |

The Schedule of Compensation did not include expenditures for honoraria, loans or cash advances, or automobile advances.

<sup>2</sup> The Schedule of Compensation was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

**B-2. Trace amounts reported on the Schedule of Housing Allowances<sup>3</sup> to supporting documentation as follows to ensure existence of actual expenditures:**

We performed the following verifications:

| Type of Reimbursement                                   | Verification Performed                                                                                                   |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Utilities                                               | Traced a sample of 2 transactions each year to supporting invoices                                                       |
| Insurance                                               | Traced all transactions to supporting invoices                                                                           |
| Real Estate Taxes                                       | Traced all transactions to supporting invoices                                                                           |
| Grounds Service                                         | Traced all transactions over \$2,000 to supporting invoices                                                              |
| Cleaning (Housekeepers)                                 | Traced total cost to the housekeepers' W-2s and the Employment Quarterly Contribution and Wage Report (unemployment tax) |
| Maintenance                                             | Traced all transactions over \$2,000 and 5 transactions under \$2,000 to supporting invoices                             |
| Mortgage Interest or Equivalent Cost of Home Ownership* | No testing was performed                                                                                                 |

\* This is an imputed cost on the Schedule of Housing Allowances based on the \$3,488,095 estimated market price of the Secretary's home at the time his employment agreement was signed and the average interest rate of 8.32% for a 30-year fixed-rate mortgage at that time. Because this imputed cost was based on those assumptions, we did not perform testing on the calculation.

All expenditures tested were supported by invoices, work orders, receipts or payroll records.

**B-3. Compare the annual housing allowance ceiling (as reported on the Secretary's employment agreement) to costs incurred and imputed as reported on the Schedule of Housing Allowances.**

The ceiling identified in the Secretary's employment agreement is reported as "\$150,000 per year...for up to fifty percent (50%) of the actual costs of his housing." The housing allowance ceiling was increased each year as part of the Secretary's compensation package. Because the housing allowance is approved on an annual calendar year basis, we compared the ceiling to costs incurred each calendar year.

In each year, incurred and imputed costs reported on the Schedule of Housing Allowances exceeded the ceiling allowance. A summary of these costs follows:

|                    | CY 2000        | CY 2001        | CY 2002        | CY 2003        | CY 2004        | CY 2005        |
|--------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Costs Incurred     | \$132,441      | \$156,333      | \$151,441      | \$162,456      | \$159,263      | \$139,103      |
| Imputed Costs      | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> | <u>290,208</u> |
| Total Costs        | \$422,649      | \$446,541      | \$441,649      | \$452,664      | \$449,471      | \$429,311      |
| 50% of Total Costs | \$211,325      | \$223,270      | \$220,824      | \$226,332      | \$224,736      | \$214,656      |
| Ceiling            | \$150,000      | \$150,000      | \$157,155      | \$162,027      | \$169,172      | \$179,322      |

A significant portion of the Secretary's housing costs are imputed as described above. The Board of Regents clarified that it intended that these amounts be considered "equivalent costs of home ownership" and thus reimbursable in accordance with the employment agreement.

<sup>3</sup> The Schedule of Housing Allowances was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

**B-4. Compare the annual housing allowance ceiling (as reported on the Secretary's employment agreement) to actual payments made to the Secretary.**

Payments to the Secretary were made periodically, based on the employment agreement ceiling, instead of on documented actual expenses. While incurred and imputed costs did exceed the ceiling, differences were noted between ceilings and actual payments (based on the Secretary's Statements of Earnings and Leave), as follows:

|                                       | CY 2000        | CY 2001        | CY 2002        | CY 2003        | CY 2004         | CY 2005        |
|---------------------------------------|----------------|----------------|----------------|----------------|-----------------|----------------|
| Ceiling                               | \$150,000      | \$150,000      | \$157,155      | \$162,027      | \$169,172       | \$179,322      |
| Actual payments made to the Secretary | <u>150,000</u> | <u>150,000</u> | <u>156,558</u> | <u>162,027</u> | <u>140,977</u>  | <u>179,322</u> |
| Ceiling Amount Exceeding Payments     | <u>\$0</u>     | <u>\$0</u>     | <u>\$597</u>   | <u>\$0</u>     | <u>\$28,195</u> | <u>\$0</u>     |

**C-1. Trace all amounts from the Schedule of Donations<sup>4</sup> (cash or securities) to acknowledgement letters from the Smithsonian and accounting records documenting receipt of the transaction (i.e., general ledger) to determine if the amounts were accurately recorded. Trace all securities transactions on the Schedule of Donations to available supporting documentation to ensure that transactions were appropriately valued. Trace all matching gifts made by third parties contingent upon the Secretary's donations to available supporting documentation and accounting records documenting receipt of the transaction.**

Amounts reported on the Schedule of Donations represented four types of transactions, as shown below:

| Transaction Type                 | Number of Transactions | Dollar Value of Transactions |
|----------------------------------|------------------------|------------------------------|
| Secretary's Cash Donations       | 7                      | \$2,938.31                   |
| Secretary's Securities Donations | 8                      | 426,355.67                   |
| Third-Party Matching Donations   | 11                     | 120,000.00                   |
| In-Honor-Of Donations            | <u>11</u>              | <u>55,000.00</u>             |
| Total                            | <u>37</u>              | <u>\$604,293.98</u>          |

We traced all transactions to supporting documentation and traced receipts to the Smithsonian general ledger. Amounts were accurately recorded and valued. The general ledger balance for donations did not reflect receipts for 2 transactions totaling \$321. Transactions listed as "In Honor Of" were not contributions of the Secretary or matching contributions; we did, however, trace amounts to supporting documentation and verified receipt.

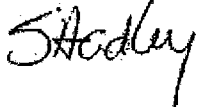
<sup>4</sup> The Schedule of Donations was prepared by the Smithsonian and was not reviewed by Cotton & Company for completeness.

**D-1. Obtain management representation letters from Smithsonian management and from the Board of Regents to confirm to the best of their knowledge that representations were accurate and pertained to the period under review.**

We requested and received management representation letters from Smithsonian management and representatives from the Board of Regents.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of opinions on the Schedules described in the first paragraph. Accordingly, we do not express such opinions. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the information and use of the Office of the Inspector General and the Smithsonian Board of Regents and is not intended to be and should not be used by anyone other than these specified parties.

COTTON & COMPANY LLP

A handwritten signature in black ink, appearing to read "S Hadley". The signature is written in a cursive, slightly slanted style.

Sam Hadley, CPA, CGFM  
Partner

**APPENDIX A**

**REFERENCE MATERIAL AND GUIDANCE PROVIDED BY THE  
SMITHSONIAN INSTITUTION**

**APPENDIX A**  
**REFERENCE MATERIAL AND GUIDANCE PROVIDED BY THE**  
**SMITHSONIAN INSTITUTION**

FY 1999 Federal Salaries & Expenses and Unrestricted General Trust Fund Budget Allocations,  
Attachment 6 - Use of Trust Funds for Representational and Special Event Expenses

Use of Trust Funds for Representational and Special Event Expenses, FY 2005 401 Allocation  
Memorandum

Trust Budget Allocations and Spending Plans, FYs 2000-2005

Decision Brief for the Under Secretary, August 4, 1998

Smithsonian Institution Travel Policies and Procedures Manual, in effect from June 29, 2000 through  
May 22, 2005

Smithsonian Directive (SD) 312, Travel, May 23, 2005

Smithsonian Institution Travel Handbook, May 23, 2005

Smithsonian Institution Employment Agreement for the Secretary

Smithsonian Institution: Compensation for Secretary Lawrence M. Small, Executive Committee of the  
Board of Regents, FYs 2001-2005

Smithsonian Directive (SD) 213, Trust Personnel Handbook, Common Types of Incentive Awards

OIG's Conclusions on the Applicability of Smithsonian Travel Policies, September 28, 2006

Interpretation of Paragraph 7 of Secretary Small's Employment Agreement, October 11, 2006



**APPENDIX B**

**SCHEDULE OF UNSUPPORTED AND INADEQUATELY SUPPORTED TRANSACTIONS**

**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**SCHEDULE B-1**  
**SCHEDULE OF UNSUPPORTED AND INADEQUATELY SUPPORTED TRANSACTIONS**

| <b>Invoice Date</b> | <b>Vendor</b>              | <b>Amount</b>             | <b>Status of Support</b>                 |
|---------------------|----------------------------|---------------------------|------------------------------------------|
| 01/05/2000          | Fredrick Miley & Assoc.    | \$46.00                   | No invoice, purchase order only          |
| 01/05/2000          | Fredrick Miley & Assoc.    | 2,774.50                  | No invoice, purchase order only          |
| 01/07/2000          | Hodges Original            | 6,442.80                  | No invoice, purchase order only          |
| 01/11/2000          | L'enfant AP                | 327.35                    | No invoice, memo only                    |
| 01/11/2000          | L'enfant AP                | 944.43                    | No invoice, memo only                    |
| 01/26/2000          | Shepherd Electric Co, Inc. | 4,600.00                  | No invoice, purchase order only          |
| 02/07/2000          | SI                         | 202.13                    | Invoices of \$57.19 are illegible        |
| 02/17/2000          | Travel (Citibank Account)  | 212.00                    | No documentation provided                |
| 03/01/2000          | Travel (Citibank Account)  | 97.00                     | No invoice, SFS invoice only             |
| 03/14/2000          | Lawrence M. Small          | 124.59                    | No invoice, memo only                    |
| 03/14/2000          | Lawrence M. Small          | 142.00                    | No invoice, memo only                    |
| 03/23/2000          | Travel (Citibank Account)  | 2,493.80                  | No documentation provided                |
| 03/27/2000          | Lawrence M. Small          | 287.53                    | No invoice, memo only                    |
| 03/27/2000          | L'enfant AP                | 287.53                    | No documentation provided                |
| 04/05/2000          | August Georges             | 70.00                     | No invoice, purchase order only          |
| 04/05/2000          | August Georges             | 2,043.00                  | No invoice, purchase order only          |
| 04/18/2000          | ACE Beverage               | 138.58                    | No invoice, event schedule only          |
| 04/18/2000          | Party Rentals, Ltd.        | 587.43                    | No invoice, event schedule only          |
| 04/27/2000          | Bernhard Furniture         | 400.00                    | No invoice, purchase order only          |
| 04/27/2000          | Bernhard Furniture         | 427.00                    | No invoice, purchase order only          |
| 05/25/2000          | Lawrence M. Small          | 212.50                    | No invoice, memo only                    |
| 06/09/2000          | Lawrence M. Small          | 277.05                    | No documentation provided                |
| 06/27/2000          | Lawrence M. Small          | 443.80                    | No invoice, memo only                    |
| 08/31/2000          | Palace Florist             | 115.27                    | Inadequately documented business purpose |
| 09/25/2000          | Travel (Citibank Account)  | 97.00                     | No documentation provided                |
| 10/03/2000          | Travel (Citibank Account)  | 108.00                    | No documentation provided                |
| 10/20/2000          | Lawrence M. Small          | 402.32                    | No documentation provided                |
| 10/25/2000          | Lawrence M. Small          | 108.00                    | No documentation provided                |
| 10/31/2000          | Palace Florist             | 117.00                    | Inadequately documented business purpose |
| 01/12/2001          | Travel (Citibank Account)  | 91.50                     | No receipt, wrong receipt provided       |
| 04/18/2001          | Travel (Citibank Account)  | 91.50                     | No receipt, wrong receipt provided       |
| 04/18/2001          | Travel (Citibank Account)  | 91.50                     | No receipt, travel voucher only          |
| 09/19/2001          | ACE Beverage               | 3.31                      | No documentation provided                |
| 09/30/2001          | Catering By Windows        | 2,487.38                  | No documentation provided                |
| 03/05/2002          | Restaurant Associates      | 100.00                    | Inadequately documented business purpose |
| 04/02/2002          | Restaurant Associates      | 100.00                    | No documentation provided                |
| 05/03/2002          | Travel (Citibank Account)  | 150.50                    | Travel voucher, no receipts              |
| 09/14/2002          | Restaurant Associates      | 100.00                    | Inadequately documented business purpose |
| 01/17/2003          | Citibank                   | 184.00                    | Travel authorization only                |
| 12/19/2003          | Citibank                   | 532.50                    | No documentation provided                |
| 04/06/2004          | Palace Florist             | 18.15                     | Inadequately documented business purpose |
| 07/25/2005          | Citibank                   | 86.63                     | No invoice, credit card statement only   |
|                     |                            | <b><u>\$28,565.58</u></b> |                                          |

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**TRAVEL COSTS**

| Invoice Date | Vendor                         | Total Amount | Unauthorized Amount | Description                                                            | Reason (see Note) |
|--------------|--------------------------------|--------------|---------------------|------------------------------------------------------------------------|-------------------|
| 11/30/2000   | Citibank (South Dakota), N.A.- | \$1,408.70   | \$1,348.75          | Charter flight from Washington, DC, to Lackawanna Station, PA          | A                 |
| 05/22/2001   | Martin Air, Inc.               | 5.50         | 5.50                | Charter flight cost: domestic segment fee                              | A                 |
| 05/22/2001   | Martin Air, Inc.               | 272.00       | 272.00              | Charter flight cost: net of fuel surcharge and credit for flight delay | A                 |
| 05/22/2001   | Martin Air, Inc.               | 650.00       | 650.00              | Charter flight cost: landing/parking                                   | A                 |
| 05/22/2001   | Martin Air, Inc.               | 1,000.00     | 1,000.00            | Charter flight cost: aircraft overnight                                | A                 |
| 05/22/2001   | Martin Air, Inc.               | 1,011.90     | 1,011.90            | Charter flight cost: Federal excise tax                                | A                 |
| 05/22/2001   | Martin Air, Inc.               | 11,570.00    | 11,570.00           | Charter flight cost for round trip from Washington to San Antonio      | A                 |
| 12/23/2003   | Lawrence M. Small              | 67.06        | 67.06               | Hotel, Chantilly VA                                                    | B                 |
| 07/15/2004   | Sandra H. Small                | 17,274.75    | 5,764.00            | Trip to Cambodia: tour package                                         | C                 |
|              |                                |              | <u>\$21,689.21</u>  |                                                                        |                   |

**OTHER COSTS**

| Invoice Date | Vendor                          | Total Amount | Unauthorized Amount | Description                                          | Reason (see Note) |
|--------------|---------------------------------|--------------|---------------------|------------------------------------------------------|-------------------|
| 02/08/2000   | L'enfant AP                     | \$2,716.03   | \$149.05            | Lunches and spousal privilege fee                    | D,E               |
| 03/01/2000   | SI                              | 339.31       | 47.63               | Meal with NASM director                              | E                 |
| 04/06/2000   | Occasions Caterers, Inc.        | 334.50       | 334.50              | Lunch with Director of Policy & Analysis             | E                 |
| 05/23/2000   | Design Cuisine                  | 414.00       | 414.00              | Staff breakfast                                      | E                 |
| 05/25/2000   | Splendid Fare Catering          | 321.75       | 321.75              | Lunch with development officer                       | E                 |
| 05/31/2000   | Design Cuisine                  | 430.00       | 430.00              | Staff breakfast                                      | E                 |
| 06/02/2000   | Design Cuisine                  | 414.00       | 414.00              | Staff breakfast                                      | E                 |
| 06/10/2000   | Design Cuisine                  | 405.50       | 405.50              | Staff breakfast                                      | E                 |
| 06/10/2000   | Design Cuisine                  | 421.50       | 421.50              | Staff breakfast                                      | E                 |
| 06/21/2000   | Design Cuisine                  | 421.50       | 421.50              | Staff breakfast                                      | E                 |
| 07/05/2000   | Design Cuisine                  | 421.50       | 421.50              | Staff breakfast                                      | E                 |
| 07/14/2000   | Design Cuisine                  | 421.50       | 421.50              | Staff breakfast                                      | E                 |
| 07/25/2000   | ACE Beverage                    | 193.81       | 5.96                | Water, Secretary's direct report dinner              | E                 |
| 07/25/2000   | Allan Woods Flowers/Gifts, Inc. | 325.00       | 325.00              | Flower arrangement, Secretary's direct report dinner | E                 |

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                       | Total Amount | Unauthorized Amount | Description                                                                         | Reason (see Note) |
|--------------|------------------------------|--------------|---------------------|-------------------------------------------------------------------------------------|-------------------|
| 07/25/2000   | Party Rentals, Ltd.          | \$580.81     | \$580.81            | Flatware, tables, china, glassware rental for the Secretary's direct reports dinner | E                 |
| 07/25/2000   | Harvest Moon Inc T/A Equinox | 1,239.00     | 1,239.00            | Catering for the Secretary's direct reports dinner                                  | E                 |
| 07/26/2000   | Susan Gage Caterers          | 1,932.00     | 1,932.00            | Catering for the Secretary's direct reports                                         | E                 |
| 08/02/2000   | Design Cuisine               | 421.50       | 421.50              | Staff breakfast                                                                     | E                 |
| 08/14/2000   | Design Cuisine               | 421.50       | 421.50              | Staff breakfast                                                                     | E                 |
| 08/14/2000   | Design Cuisine               | 421.50       | 421.50              | Staff breakfast                                                                     | E                 |
| 09/15/2000   | Design Cuisine               | 449.00       | 449.00              | Staff breakfast                                                                     | E                 |
| 09/26/2000   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 10/03/2000   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 10/24/2000   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 11/08/2000   | Design Cuisine               | 561.50       | 561.50              | Staff breakfast                                                                     | E                 |
| 11/10/2000   | Design Cuisine               | 286.00       | 286.00              | Lunch with SI management                                                            | E                 |
| 01/17/2001   | Design Cuisine               | 505.00       | 505.00              | Staff breakfast                                                                     | E                 |
| 01/29/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 02/05/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 02/05/2001   | Design Cuisine               | 739.00       | 739.00              | Staff farewell breakfast                                                            | E                 |
| 02/20/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 03/07/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 03/12/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 03/12/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 03/14/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 03/16/2001   | Restaurant Associates        | 150.00       | 150.00              | Luncheon with SI museum directors                                                   | E                 |
| 04/03/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 04/06/2001   | Design Cuisine               | 497.00       | 497.00              | Staff breakfast                                                                     | E                 |
| 04/09/2001   | Restaurant Associates        | 1,052.00     | 1,052.00            | Staff breakfast                                                                     | E                 |
| 04/24/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 04/25/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 04/27/2001   | Restaurant Associates        | 100.00       | 100.00              | Luncheon with director of HMSG                                                      | E                 |
| 05/01/2001   | Design Cuisine               | 449.00       | 449.00              | Staff breakfast                                                                     | E                 |
| 05/03/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 05/08/2001   | Design Cuisine               | 506.00       | 506.00              | Staff breakfast                                                                     | E                 |
| 06/05/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 06/19/2001   | Design Cuisine               | 508.50       | 508.50              | Staff breakfast                                                                     | E                 |
| 06/22/2001   | Design Cuisine               | 506.00       | 506.00              | Staff breakfast                                                                     | E                 |
| 07/02/2001   | Design Cuisine               | 506.00       | 506.00              | Staff breakfast                                                                     | E                 |
| 07/05/2001   | Harvest Moon Inc.            | 1,100.00     | 1,100.00            | Luncheon for direct reports                                                         | E                 |
| 07/10/2001   | Design Cuisine               | 1,127.00     | 1,127.00            | Secretary's tea for the Under Secretary's staff                                     | E                 |
| 07/18/2001   | Design Cuisine               | 533.00       | 533.00              | Staff breakfast                                                                     | E                 |
| 07/25/2001   | Allan Woods                  | 225.00       | 225.00              | Luncheon for direct reports                                                         | E                 |
| 07/30/2001   | Restaurant Associates        | 411.60       | 411.60              | Luncheon with the Under Secretary's directors                                       | E                 |

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                          | Total Amount | Unauthorized Amount | Description                                                                                   | Reason (see Note) |
|--------------|---------------------------------|--------------|---------------------|-----------------------------------------------------------------------------------------------|-------------------|
| 07/31/2001   | Party Rentals, Ltd.             | \$304.56     | \$304.56            | China, glassware, flatware, and linens rental for direct reports luncheon                     | E                 |
| 08/03/2001   | Restaurant Associates           | 294.75       | 294.75              | Luncheon with the Under Secretary's directors                                                 | E                 |
| 08/14/2001   | Design Cuisine                  | 128.00       | 128.00              | Service charges for canceled staff breakfast                                                  | E                 |
| 09/25/2001   | Design Cuisine                  | 534.00       | 534.00              | Staff breakfast                                                                               | E                 |
| 09/28/2001   | Design Cuisine                  | 555.50       | 555.50              | Staff breakfast                                                                               | E                 |
| 10/16/2001   | Restaurant Associates           | 376.00       | 376.00              | Staff breakfast                                                                               | E                 |
| 10/26/2001   | Design Cuisine                  | 489.00       | 489.00              | Staff breakfast                                                                               | E                 |
| 10/31/2001   | Design Cuisine                  | 412.00       | 412.00              | Staff breakfast                                                                               | E                 |
| 11/02/2001   | Design Cuisine                  | 495.50       | 495.50              | Staff breakfast                                                                               | E                 |
| 12/05/2001   | Restaurant Associates           | 380.00       | 380.00              | Staff breakfast                                                                               | E                 |
| 12/14/2001   | Restaurant Associates           | 380.00       | 380.00              | Staff breakfast                                                                               | E                 |
| 12/29/2001   | Restaurant Associates           | 350.00       | 350.00              | Service charges for canceled staff breakfast                                                  | E                 |
| 01/09/2002   | Restaurant Associates           | 365.00       | 365.00              | Staff breakfast                                                                               | E                 |
| 02/05/2002   | Restaurant Associates           | 380.00       | 380.00              | Staff breakfast                                                                               | E                 |
| 03/04/2002   | Restaurant Associates           | 100.00       | 100.00              | Lunch with HMSG director                                                                      | E                 |
| 05/14/2002   | Susan Gage Caterers             | 1,725.00     | 1,725.00            | Dinner to welcome new director of development                                                 | E                 |
| 05/18/2002   | Restaurant Associates           | 585.00       | 585.00              | Refreshments for direct reports and unit heads                                                | E                 |
| 05/23/2002   | Allan Woods Flowers/Gifts, Inc. | 340.00       | 340.00              | Centerpiece, foyer arrangement, powder room for dinner to welcome new director of development | E                 |
| 06/17/2002   | Design Cuisine                  | 406.00       | 406.00              | Staff breakfast                                                                               | E                 |
| 06/25/2002   | Design Cuisine                  | 471.50       | 471.50              | Staff breakfast                                                                               | E                 |
| 06/28/2002   | SI                              | 281.18       | 124.50              | Dinner with development director                                                              | E                 |
| 07/06/2002   | Restaurant Associates           | 100.00       | 100.00              | Luncheon with SAO director                                                                    | E                 |
| 07/20/2002   | Restaurant Associates           | 100.00       | 100.00              | Luncheon with acting NMNH director                                                            | E                 |
| 09/14/2002   | Restaurant Associates           | 400.00       | 400.00              | Office of the Secretary staff lunch                                                           | E                 |
| 09/23/2002   | Harvest Moon Inc.               | 1,368.00     | 1,368.00            | Direct reports dinner                                                                         | E                 |
| 09/25/2002   | Design Cuisine                  | 455.00       | 455.00              | Staff breakfast                                                                               | E                 |
| 09/27/002    | DC Party Rental LLC             | 775.20       | 775.20              | Glassware, flatware, china, and linen rental for direct reports dinner                        | E                 |
| 10/24/2002   | Allan Woods                     | 300.00       | 300.00              | Flower arrangements for direct reports dinner                                                 | E                 |
| 12/20/2002   | Design Cuisine                  | 427.50       | 427.50              | Staff breakfast                                                                               | E                 |
| 01/15/2003   | Restaurant Associates           | 100.00       | 100.00              | Lunch with NMAH director                                                                      | E                 |
| 02/28/2003   | Design Cuisine                  | 462.00       | 462.00              | Staff breakfast                                                                               | E                 |

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor                | Total Amount          | Unauthorized Amount | Description                                            | Reason (see Note) |
|--------------|-----------------------|-----------------------|---------------------|--------------------------------------------------------|-------------------|
| 03/08/2003   | Restaurant Associates | \$100.00              | \$100.00            | Lunch with development director                        | E                 |
| 03/15/2003   | Restaurant Associates | 100.00                | 100.00              | Lunch with acting NMNH director                        | E                 |
| 04/12/2003   | Restaurant Associates | 2,083.00 <sup>5</sup> | 100.00              | Lunch with NMAH director                               | E                 |
| 06/28/2003   | Restaurant Associates | 100.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 07/21/2003   | Design Cuisine        | 453.00                | 453.00              | Staff breakfast                                        | E                 |
| 07/21/2003   | Design Cuisine        | 462.00                | 462.00              | Staff breakfast                                        | E                 |
| 09/19/2003   | Restaurant Associates | 100.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 10/06/2003   | Restaurant Associates | 100.00                | 100.00              | Lunch with HMSG director                               | E                 |
| 10/09/2003   | Design Cuisine        | 466.50                | 466.50              | Staff breakfast                                        | E                 |
| 10/24/2003   | Restaurant Associates | 350.00                | 350.00              | Farewell lunch for the Under Secretary                 | E                 |
| 12/04/2003   | Restaurant Associates | 300.00                | 300.00              | Luncheon with SI employees                             | E                 |
| 03/18/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 05/27/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 06/09/2004   | Restaurant Associates | 410.00                | 410.00              | Staff breakfast                                        | E                 |
| 06/30/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch with FSG director                                | E                 |
| 07/20/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 07/26/2004   | Lawrence M. Small     | 33.77                 | 33.77               | Breakfast with SBV Board Member                        | E                 |
| 10/05/2004   | Restaurant Associates | 488.70                | 488.70              | Staff breakfast                                        | E                 |
| 11/25/2004   | Citibank              | 550.00                | 100.00              | Lunch with NMAH director                               | E                 |
| 03/14/2000   | Lawrence M. Small     | 266.59                | 142.00              | Meal in 1999                                           | F                 |
| 05/06/2000   | ACE Beverage          | 15.99                 | 15.99               | Alcoholic beverages                                    | G                 |
| 05/17/2000   | ACE Beverage          | 160.68                | 140.88              | Alcoholic beverages                                    | G                 |
| 07/25/2000   | ACE Beverage          | 193.81                | 187.85              | Alcoholic beverages, Secretary's direct report dinner  | G                 |
| 09/18/2000   | ACE Beverage          | 437.08                | 412.81              | Alcoholic beverages                                    | G                 |
| 10/10/2000   | ACE Beverage          | 253.33                | 248.86              | Alcoholic beverages                                    | G                 |
| 11/21/2000   | ACE Beverage          | 539.17                | 448.09              | Alcoholic beverages                                    | G                 |
| 02/23/2001   | ACE Beverage          | 163.38                | 163.38              | Alcoholic beverages                                    | G                 |
| 05/24/2001   | ACE Beverage          | 80.94                 | 80.94               | Alcoholic beverages                                    | G                 |
| 05/30/2001   | ACE Beverage          | 260.54                | 238.83              | Alcoholic beverages                                    | G                 |
| 11/05/2001   | ACE Beverage          | 55.96                 | 55.96               | Alcoholic beverages                                    | G                 |
| 01/16/2002   | ACE Beverage          | 107.92                | 107.92              | Alcoholic beverages                                    | G                 |
| 05/14/2002   | ACE Beverage          | 133.14                | 109.41              | Alcoholic beverages                                    | G                 |
| 05/31/2002   | ACE Beverage          | 161.27                | 142.89              | Alcoholic beverages                                    | G                 |
| 09/24/2002   | Ace Beverages         | 186.04                | 186.04              | Alcoholic beverages                                    | G                 |
| 06/19/2004   | Ace Beverages         | 139.88                | 139.88              | Alcoholic beverages                                    | G                 |
| 01/22/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch for personal contact                             | H                 |
| 03/18/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch for personal contact                             | H                 |
| 04/08/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch for personal contact                             | H                 |
| 05/21/2004   | Restaurant Associates | 100.00                | 100.00              | Lunch for personal contact                             | H                 |
| 10/25/2004   | Citibank              | 580.00                | 200.00              | Lunch for personal contact                             | H                 |
| 07/25/2005   | Citibank              | 950.00                | 100.00              | Lunch for personal contact                             | H                 |
| 06/02/2000   | L'enfant AP           | 4,811.50              | 4,811.50            | Cash award to the Executive Assistant to the Secretary | I                 |

<sup>5</sup> Actual invoice and amount paid to the vendor were \$100. The \$2,083.00 was a system error.

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor         | Total Amount | Unauthorized Amount | Transaction Description                                                                 | Reason (see Note) |
|--------------|----------------|--------------|---------------------|-----------------------------------------------------------------------------------------|-------------------|
| 06/30/2000   | Palace Florist | \$690.70     | \$690.70            | Floral arrangements to former SI employees and balance forward on account               | J                 |
| 07/31/2000   | Palace Florist | 54.65        | 54.65               | Floral arrangement to SI employee                                                       | J                 |
| 09/15/2000   | Palace Florist | 164.23       | 164.23              | Floral arrangement to SI employee                                                       | J                 |
| 09/18/2000   | SI             | 137.56       | 137.56              | Gifts for donors                                                                        | J                 |
| 10/31/2000   | Palace Florist | 276.88       | 276.88              | Floral arrangements to SI employees                                                     | J                 |
| 11/21/2000   | SI             | 269.85       | 19.96               | Donor gifts                                                                             | J                 |
| 11/21/2000   | SI             | 456.02       | 424.00              | Gifts                                                                                   | J                 |
| 11/30/2000   | Palace Florist | 275.90       | 275.90              | Floral arrangements to SI employees                                                     | J                 |
| 12/04/2000   | SI             | 318.24       | 97.60               | Donor gifts                                                                             | J                 |
| 12/30/2000   | Palace Florist | 212.95       | 212.95              | Floral arrangement to SI employee                                                       | J                 |
| 01/31/2001   | Palace Florist | 119.95       | 119.95              | Floral arrangement to SI employee                                                       | J                 |
| 02/22/2001   | SI             | 136.85       | 52.56               | Donor gifts                                                                             | J                 |
| 02/28/2001   | Palace Florist | 72.45        | 72.45               | Floral arrangement to donor                                                             | J                 |
| 04/03/2001   | Palace Florist | 118.70       | 118.70              | Floral arrangement to donor                                                             | J                 |
| 04/04/2001   | SI             | 48.54        | 48.54               | Books for a donor                                                                       | J                 |
| 05/31/2001   | Palace Florist | 112.95       | 112.95              | Floral arrangement to former SI employee                                                | J                 |
| 06/30/2001   | Palace Florist | 315.95       | 315.95              | Floral arrangement to SI employees                                                      | J                 |
| 08/01/2001   | SI             | 70.16        | 15.99               | Gift for donor                                                                          | J                 |
| 10/31/2001   | SI             | 349.98       | 349.98              | Champagne and a gift basket for SI employees                                            | J                 |
| 12/06/2001   | SI             | 26.00        | 26.00               | Gift for a donor                                                                        | J                 |
| 12/31/2001   | Palace Florist | 325.90       | 325.90              | Floral arrangement to SI employees                                                      | J                 |
| 12/31/2001   | Palace Florist | 338.85       | 338.85              | Floral arrangements to SI employees                                                     | J                 |
| 02/28/2002   | Palace Florist | 577.70       | 577.70              | Floral arrangements to SI employees, former employee, former Regent and spouse of donor | J                 |
| 03/22/2002   | SI             | 71.18        | 13.69               | Gift for donor                                                                          | J                 |
| 03/22/2002   | SI             | 80.00        | 40.00               | Book for former Chair of SNB                                                            | J                 |
| 03/30/2002   | Palace Florist | 340.90       | 340.90              | Floral arrangements to spouse of employee, donor, and spouse of donor                   | J                 |
| 04/30/2002   | Palace Florist | 388.85       | 388.85              | Floral arrangements to SI employees                                                     | J                 |
| 06/02/2002   | Palace Florist | 212.95       | 212.95              | Floral arrangement to SI employee                                                       | J                 |
| 07/16/2002   | Palace Florist | 338.85       | 338.85              | Floral arrangements to SI employees and donor                                           | J                 |
| 08/30/2002   | Palace Florist | 112.95       | 112.95              | Floral arrangement to SI employee                                                       | J                 |
| 09/27/2002   | SI             | 9.00         | 9.00                | Museum ticket for donor                                                                 | J                 |
| 09/30/2002   | Palace Florist | 275.90       | 275.90              | Floral arrangements to SI employees                                                     | J                 |
| 10/31/2002   | Palace Florist | 501.80       | 501.80              | Floral arrangements to SI employees and balance forward                                 | J                 |
| 11/30/2002   | Palace Florist | 285.90       | 285.90              | Floral arrangements to former SI employee and Regent                                    | J                 |
| 12/31/2002   | Palace Florist | 35.00        | 35.00               | Floral arrangement to SI employee                                                       | J                 |
| 01/31/2003   | Palace Florist | 260.90       | 260.90              | Floral arrangements to SI employees                                                     | J                 |
| 03/31/2003   | Palace Florist | 27.95        | 27.95               | Floral arrangement to donor                                                             | J                 |
| 07/12/2003   | Palace Florist | 260.90       | 260.90              | Floral arrangement to Regent and balance forward                                        | J                 |

**SCHEDULE B-2**  
**SCHEDULE OF UNAUTHORIZED TRANSACTIONS**

**OTHER COSTS (CONTINUED)**

| Invoice Date | Vendor            | Total Amount | Unauthorized Amount | Transaction Description                                                              | Reason (see Note) |
|--------------|-------------------|--------------|---------------------|--------------------------------------------------------------------------------------|-------------------|
| 08/31/2003   | Palace Florist    | \$66.57      | \$66.57             | Floral arrangement to SI employee                                                    | J                 |
| 08/31/2003   | Palace Florist    | 536.80       | 536.80              | Floral arrangements to SI employee and a former Regent, includes balance forward     | J                 |
| 10/31/2003   | Palace Florist    | 44.80        | 44.80               | Floral arrangement to a supporter                                                    | J                 |
| 11/30/2003   | Palace Florist    | 224.60       | 224.60              | Floral arrangements to donors                                                        | J                 |
| 12/31/2003   | Palace Florist    | 119.44       | 119.44              | Floral arrangement to SI employee                                                    | J                 |
| 03/31/2004   | Palace Florist    | 158.05       | 158.05              | Floral arrangement to former chair of SNB                                            | J                 |
| 04/06/2004   | Palace Florist    | 242.75       | 242.75              | Floral arrangement to former SI employee and balance forward                         | J                 |
| 04/21/2004   | Lawrence M. Small | 257.60       | 257.60              | Gift to chair of SNB                                                                 | J                 |
| 06/21/2004   | Palace Florist    | 68.90        | 68.90               | Floral arrangement to former Regent                                                  | J                 |
| 06/26/2004   | Palace Florist    | 163.95       | 163.95              | Floral arrangement to former Regent                                                  | J                 |
| 06/30/2004   | Palace Florist    | 139.90       | 139.90              | Floral arrangement to former SI employee                                             | J                 |
| 07/31/2004   | Palace Florist    | 731.55       | 731.55              | Floral arrangements to SI employees and a SNB board member, includes balance forward | J                 |
| 09/15/2004   | Palace Florist    | 114.95       | 114.95              | Floral arrangement to SI employee                                                    | J                 |
| 12/03/2004   | Lawrence M. Small | 404.76       | 404.76              | Gifts to donors                                                                      | J                 |
| 12/25/2004   | Citibank          | 1,806.76     | 664.96              | Smithsonite for donors                                                               | J                 |
| 01/25/2005   | Citibank          | 114.95       | 114.95              | Floral arrangement to SI employee                                                    | J                 |
| 01/28/2005   | Lawrence M. Small | 458.04       | 248.51              | Gift to a Regent                                                                     | J                 |
| 02/25/2005   | Citibank          | 121.51       | 121.51              | Floral arrangement to donor                                                          | J                 |
| 03/25/2005   | Citibank          | 174.38       | 174.38              | Floral arrangement to SI employee                                                    | J                 |
| 04/18/2005   | Lawrence M. Small | 20.79        | 20.79               | Book for a Regent                                                                    | J                 |
| 04/25/2005   | Citibank          | 242.01       | 242.01              | Floral arrangements to donors                                                        | J                 |
| 05/25/2005   | Citibank          | 173.38       | 173.38              | Floral arrangement to SI employee                                                    | J                 |
| 06/22/2005   | Lawrence M. Small | 224.12       | 224.12              | Floral arrangement to donor                                                          | J                 |
| 06/25/2005   | Citibank          | 265.31       | 265.31              | Floral arrangements to SI employees                                                  | J                 |
| 07/25/2005   | Citibank          | 121.51       | 121.51              | Floral arrangement to SI employee                                                    | J                 |
| 08/11/2005   | Lawrence M. Small | 248.83       | 248.83              | Gift to former Secretary of SI                                                       | J                 |
| 08/25/2005   | Citibank          | 492.57       | 492.57              | Floral arrangements to SI employees                                                  | J                 |
| 09/25/2005   | Citibank          | 64.95        | 64.95               | Floral arrangement to Regent staffer                                                 | J                 |
|              |                   |              | <u>\$67,865.40</u>  |                                                                                      |                   |



**SCHEDULE B-2**  
**NOTES**

- A. The Secretary took charter flights from Washington, DC, to Scranton, Pennsylvania, on November 30, 2000, and from Washington, DC, to San Antonio, Texas, on May 22, 2001, to attend Smithsonian-related social functions. The Smithsonian travel policy states that travelers should select "the mode of transportation that is most advantageous to SI when cost and other factors are considered..", and that special conveyances (such as private aircraft) may be used if authorized. SI could not provide authorization for these flights. Justification for the San Antonio charter indicated that there were commercial flights available, but the charter flight was chosen because of concerns about potential flight delays.
- B. The Secretary had overnight accommodations at a hotel in Chantilly, Virginia, for Udvar-Hazy events on December 22, 2003. Chantilly is approximately 24 miles from the Secretary's Washington, DC, office, which is considered his official duty station. The Smithsonian's travel policy states that per diem starts when an employee departs his home, office, or duty station. Due to the proximity of the events, a Chantilly destination is considered local travel and thus not eligible for lodging reimbursement.
- C. The Secretary and his spouse attended a Smithsonian National Board (SNB) meeting in China in May 2004. Before returning to the United States, Mrs. Small took a side trip to Cambodia with the SNB, but without the Secretary. She later received reimbursement for that trip. The Smithsonian travel policy states that spouses of SI employees who are traveling to attend an official function may be authorized to travel if their services in an official capacity can be demonstrated in advance, and the travel is approved by the Under Secretary. Smithsonian representatives could not provide support to document that the trip was authorized in advance, or approved by the Under Secretary.
- D. The Secretary received reimbursement for his membership in the Cosmos Club, which provides the option of spousal privilege. The Secretary opted to pay the \$34 spousal privilege fee and was reimbursed from the Smithsonian for the year 2000. The Secretary's employment agreement does not authorize spousal privilege at Smithsonian expense, and Mrs. Small was not an employee who would be entitled to such membership.
- E. The Secretary frequently worked through lunch or dinner with his staff and charged meal costs on these occasions. He also hosted a number of staff breakfasts. The costs of these meals were charged to Funds 401 and 402. The 1999 Use of Trust Funds for Representational and Special Event Expenses, the Institution's official policy regarding the use of trust funds, states:

*Trust funds may not be used to cover costs of working luncheons involving only SI staff members.*

Further, it states:

*Smithsonian-provided meals are limited to occasions where they are judged essential to efficient, successful completion of the project.*

This guidance was updated on December 1, 2004, to state that trust funds can only be used for staff meetings and luncheons if "authorized for use by the Secretary...to support staff breakfast/lunch meetings." We therefore classified only those staff meal costs incurred before December 1, 2004, as unauthorized.

- F. The Secretary was reimbursed in March 2000 for a December 8, 1999, lunch with a Smithsonian employee. The Secretary was not yet a Smithsonian employee in December. Therefore, the reimbursement is unauthorized.
- G. Costs of alcoholic beverages served at dinners hosted by the Secretary were paid out of the 401 Fund. The 1999 Use of Trust Funds for Representational and Special Event Expenses does not list alcoholic beverages as an allowable expense, while the 2004 version explicitly states that the 401 Fund cannot be used for alcoholic beverages.<sup>6</sup>
- H. The Secretary was reimbursed for lunches with personal contacts. Those lunches were not hosted for Smithsonian business purposes. Therefore, reimbursement of personal contact lunches is not authorized.
- I. The Secretary awarded a \$4,812 cash bonus to the Executive Assistant to the Secretary in June 2000. The Smithsonian bonus policy, Common Types of Incentive Awards, identifies two types of cash awards: cash awards for sustained superior performance and for special acts or services. Based on the evidence provided, the Executive Assistant's bonus did not qualify under either of these descriptions and is therefore unauthorized.
- J. The Secretary purchased various gifts (such as flowers, plants, books, ties, and smithsonite) for Smithsonian employees, donors, and others. These gifts were charged against 401 and 402 funds. The 1999 Use of Trust Funds for Representational and Special Event Expenses does not list gifts as an authorized expense, while the 2004 version explicitly states that trust funds cannot be used for gifts for any purpose for Smithsonian staff, volunteers, donors, etc.

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<sup>6</sup> The Secretary's staff believed that he was authorized to use Smithsonian funds to purchase alcoholic beverages and gifts because the FY 2004 and 2005 trust fund spending guidelines (issued by the Office of Planning, Management & Budget) state that "In addition to general authorized use of allocated central trust funds for representational and special event purposes, these funds are available to the Office of the Secretary to allow the Secretary to carryout [sic] his official duties." We do not believe, however, that this language allows the Secretary to use the funds in ways otherwise not authorized by the policy.

**APPENDIX C**

**ACRONYMS USED BY THE SMITHSONIAN INSTITUTION**

## APPENDIX C

### ACRONYMS USED BY THE SMITHSONIAN INSTITUTION

| Acronyms | Full Name                             |
|----------|---------------------------------------|
| CFO      | Chief Financial Officer               |
| FSG      | Freer and Sackler Galleries           |
| FY       | Fiscal Year                           |
| HMSG     | Hirshhorn Museum and Sculpture Garden |
| NASM     | National Air & Space Museum           |
| NMAH     | National Museum of American History   |
| NMNH     | National Museum of Natural History    |
| OIG      | Office of the Inspector General       |
| SAO      | Smithsonian Astrophysical Observatory |
| SI       | Smithsonian Institution               |
| SBV      | Smithsonian Business Ventures         |
| SNB      | Smithsonian National Board            |

# EXHIBIT 27

**BYLAWS**  
*of the*  
**BOARD OF REGENTS**

*and*

**CHARTER PROVISIONS**  
*of the*  
**SMITHSONIAN INSTITUTION**



Smithsonian Institution

2003

IRC0771

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**PART 2. CHARTER PROVISIONS OF THE SMITHSONIAN INSTITUTION**  
(Title 20, United States Code)

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- 61. to 64. Repealed Oct. 31, 1951, ch. 654, § 1(37) to (40), 65 Stat. 702
- 65. Repealed. Pub. L. 89-674, § 3, Oct. 15, 1966, 80 Stat. 953
- 65a. Director of the National Museum
- 66. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(19), 63 Stat. 400, eff. July 1, 1949, renumbered Sept. 5, 1950, ch. 849, § 6(a),(b), 64 Stat. 583
- 67. Right of repeal
- 68. Repealed Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111
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## HISTORY OF THE BYLAWS OF THE BOARD OF REGENTS

The Bylaws of the Board of Regents were adopted by resolution of the Board at its meeting on September 17, 1979.

By resolution at the meeting of the Board of Regents on September 22, 1980, the Board amended the Bylaws to include Section 2.08 Regent Emeritus.

By resolution at the meeting of the Board of Regents on January 25, 1982, the Board amended the Bylaws to include Section 2.09 Indemnification. This section was further amended by resolution of the Board at its meeting on May 3, 1982.

By resolution at the meeting of the Board of Regents on May 5, 1986, the Board amended the Bylaws to include Section 2.10 Disclosure.

By resolution at the meeting of the Board of Regents on January 30, 1989, the Board amended the Bylaws to include a new Section 4.03 Nominating Committee and to make other editorial changes.

By resolution at the meeting of the Board of Regents on May 7, 1990, the Board amended the Bylaws to include revisions to Sections 6.01 and 6.06.

By resolution at the meeting of the Board of Regents on September 16, 1991, the Board amended the Bylaws to include an additional provision under Section 2.10 Disclosure and to describe responsibilities under Section 5.05 Chief Financial Officer.

By resolution at the meeting of the Board of Regents on May 8, 1995, the Board amended sections 2.03, 5.02, 5.03, and 5.04 of the Bylaws and adopted section 5.07 of the Bylaws primarily to reflect the current table of organization.

By resolution at the meeting of the Board of Regents on May 8, 2000, the Board amended sections 4.02, 5.03, eliminated 5.04, and renumbered the following sections of the Bylaws accordingly to reflect the current table of organization.

By resolution at the meeting of the Board of Regents on May 6, 2002, the Board amended the Bylaws to include Sections 2.06 Action by Ballot Without a Meeting, 2.07 Emergency Meetings, and 2.08 Method of Communication for Action Without a Meeting, and renumbered the following sections of the Bylaws accordingly.

By resolution at the meeting of the Board of Regents on September 23, 2002, the Board amended the Bylaws to include, by way of substitution, Section 2.13 Ethics and Conflicts of Interest.

SMITHSONIAN INSTITUTION  
Bylaws of the Board of Regents  
2003

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*Section 1. Promulgation*

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**1.01 CHARTER**

These bylaws have been adopted by the Board of Regents to govern the conduct of the Smithsonian Institution's business pursuant to an Act of Congress approved August 10, 1846, as amended (20 U.S.C. § 41, et seq.) which act as so amended is hereinafter referred to as the "Charter." These bylaws are in all respects subject to the provisions of the Charter and shall be interpreted accordingly.

**1.02 AMENDMENT**

These bylaws may be amended at any meeting of the Board of Regents by a majority vote of the Regents present, provided that the proposed amendments have been mailed to each member of the Board of Regents not later than thirty days prior to such meeting.

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*Section 2. Board of Regents*

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**2.01 POWERS AND COMPOSITION**

The governing body of the Smithsonian Institution is the Board of Regents specified in the Charter. (See also 20 U.S.C. § 42.)

**2.02 APPOINTMENT**

Members of the Board of Regents are appointed or elected in the manner specified by the Charter. When a vacancy arises from death, resignation or retirement of a citizen member elected by joint resolution of Congress, the Board of Regents shall nominate a proposed successor for consideration by the Senate and the House of Representatives. (See also 20 U.S.C. § 43.)

**2.03 TERM OF OFFICE AND VACANCIES**

Regents shall serve such terms, and vacancies on the Board of Regents shall be filled, as specified in the Charter. In nominating citizen members of the class, other than residents of the District of Columbia, for election by joint resolution of Congress, the Board of Regents shall give consideration to rotation of membership among citizens of the various states. The Board of Regents shall not

nominate citizen members to succeed themselves after they have served two consecutive six-year terms. (See also 20 U.S.C. § 43.)

**2.04 MEETINGS**

The Board of Regents shall hold regular and special meetings at such times and places as the Board of Regents may from time to time determine, provided that one meeting annually shall be held in the District of Columbia, and provided further that any meeting at which a Chancellor or a Secretary is elected shall be held in the District of Columbia. A special meeting of the Board of Regents may be called on request of any three members of the Board of Regents. (See also 20 U.S.C. § 44.)

**2.05 NOTICE OF MEETINGS**

Notice of regular meetings of the Board of Regents shall be given in writing to each Regent at least thirty days prior to such meetings. Notices of special meetings shall be given to each Regent at least ten days prior to such meetings. Information about matters to be considered shall be furnished to the Regents as soon as practicable prior to each meeting. (See also 20 U.S.C. § 44.)

**2.06 ACTION BY BALLOT WITHOUT A MEETING**

When requested by the Executive Committee, any action required or permitted to be taken at a meeting of the Board of Regents, except the election of a Secretary or the nomination of a member of the Board, may be taken without a meeting if a majority of the Board of Regents votes to approve the action by responding affirmatively to a written ballot distributed to each Regent by the Office of the Secretary. The ballot shall set forth the proposed action(s) and provide an opportunity to specify approval or disapproval of each proposed action, a place for the Regent's signature, and a reasonable time within which to return the ballot to the Office of the Secretary. Each Regent who wishes to vote must mark and sign the ballot and return it to the Office of the Secretary within the time specified. The Regents' approval or disapproval of any action by this method shall have the same force and effect as a vote by the Board of Regents at a formal meeting of the Board. All ballots returned to the Office of the Secretary shall be filed with the records of the proceedings of the Board of Regents maintained in the Office of the Secretary.

**2.07 EMERGENCY MEETINGS**

When requested by the Executive Committee, any six Regents, the Chancellor, the Chairman of the Executive Committee, or the Secretary, the Office of the Secretary may convene an emergency meeting of the Board of Regents by providing 72 hours notice, including notice by telephonic communication. The emergency meeting may be conducted in person, telephonically, or by such other means as may be determined by the Executive Committee.

- 2.08 METHOD OF COMMUNICATION FOR ACTION WITHOUT A MEETING**  
Any and all communications to and from Regents seeking or taking action by the Regents without a meeting may be made by hand delivery, by deposit in U.S. Mail, by express mail, by electronic facsimile, or by such other means as may be determined by the Executive Committee.
- 2.09 QUORUM**  
At any meeting of the Board of Regents, eight members constitute a quorum, but in the absence of a quorum a lesser number may adjourn the meeting. (See also 20 U.S.C. § 44.)
- 2.10 MINUTES**  
Minutes of meetings of the Board of Regents shall be made available to all members of the Board of Regents and to the Congress as soon as practicable after each meeting.
- 2.11 REGENT EMERITUS**  
The Board of Regents may, by resolution, confer the title of Regent Emeritus on former Regents who accept responsibilities for continuing activities in the interests of the Smithsonian Institution.
- 2.12 INDEMNIFICATION**  
Members of the Board of Regents, Regents' Committees and Smithsonian advisory bodies, Regents Emeritus, officers, or employees of the Smithsonian may be indemnified for any and all liabilities and reasonable expenses incurred in connection with any claim, action, suit, or proceeding arising from present or past service for the Smithsonian Institution, in accordance with resolutions adopted by the Board.
- 2.13 ETHICS AND CONFLICTS OF INTEREST**  
The Board of Regents shall adopt and members of the Board of Regents shall adhere to ethics guidelines setting forth appropriate standards of conduct, provisions to avoid potential conflicts of interest, and requirements for disclosure of personal interests that may relate to the Smithsonian Institution.

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*Section 3. Executive Committee*

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- 3.01 POWERS; COMPOSITION**  
The Board of Regents shall elect from its members an Executive Committee consisting of three members (in accordance with 20 U.S.C. § 44). The Executive Committee shall have and may exercise all powers of the Board of Regents when the Board of Regents is not in session, except those expressly reserved to itself

by the Board of Regents, provided that all such proceedings shall be reported to the Board of Regents when next the Board meets.

**3.02 APPOINTMENT**

Elections to the Executive Committee may be made at any regular or special meeting of the Board of Regents. The Executive Committee shall include at least two citizen members of the Board of Regents who are elected by joint resolution of Congress.

**3.03 MEETINGS**

The Executive Committee shall hold meetings at such times as it shall determine. Meetings of the Executive Committee shall be held in the District of Columbia unless otherwise determined by the Executive Committee. Expenses of Regents in attending meetings of the Executive Committee, including travel expenses to and from the place of meeting, may be paid by the Institution. Two members of the Executive Committee shall constitute a quorum.

**3.04 MINUTES**

Minutes of all meetings of the Executive Committee shall be made available to all members of the Board of Regents as soon as practicable.

**3.05 RULES**

The Executive Committee shall have power to adopt rules for the conduct of its business in respect to all matters not provided for in the bylaws or by rules adopted by the Board of Regents.

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*Section 4. Other Committees*

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**4.01 AUDIT AND REVIEW COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint an audit and review committee including no fewer than three members of the Board of Regents. The audit and review committee shall do all things necessary to assure the Board that the Institution's accounting systems and internal financial controls are in good order and to facilitate communication between the Board of Regents and the Institution's internal auditors, its independent auditors, and those of the General Accounting Office. The audit and review committee shall provide a direct channel of communication between the Board of Regents and the Institution's independent auditors who shall be certified public accountants nominated by the committee and appointed by the Board of Regents. The audit and review committee shall review the Institution's operations for compliance with approved programs and policies and shall perform related functions as directed by the Board of Regents. The committee may call upon the Institution's officers or staff for assistance as necessary and may employ outside professional

assistance in performance of its duties if it deems this desirable. The audit and review committee shall report its findings directly to the Board of Regents at appropriate intervals but not less frequently than annually.

**4.02 FINANCE AND INVESTMENT COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint a Finance and Investment Committee including no fewer than four members of the Board of Regents. The Finance and Investment Committee shall be responsible for oversight of the Institution's annual budgets, long-range financial planning, investment program and strategies, and shall perform such related functions as may be assigned to it by the Board of Regents. The Finance and Investment Committee may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its duties if it seems desirable. The Finance and Investment Committee shall report its findings, conclusions and recommendations to the Board of Regents.

**4.03 NOMINATING COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint a nominating committee including three members of the Board of Regents, one of whom shall be a member of the Executive Committee. The nominating committee shall be responsible for recommending candidates for service as citizen members of the Board, for nominating candidates for election as Chancellor or members of the Executive Committee, and for such other nominations or recommendations as may be required by the Board from time to time. The nominating committee may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its duties.

**4.04 OTHER STANDING OR SPECIAL COMMITTEES**

The Board of Regents shall have power to establish other standing or special committees. Any committee so established may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its assigned functions.

**4.05 QUORUM**

Unless otherwise specified by the Board of Regents, a majority of the members of all standing and special committees as may be established by the Board shall constitute a quorum.

**4.06 CHAIR; RULES**

Each committee established by the Board of Regents shall perform its functions under the general direction of a chair appointed by the Chancellor with approval of the Board of Regents. Each such committee shall have the power to adopt rules for the conduct of its business in respect of all matters not provided for in the bylaws or by rules adopted by the Board of Regents. Expenses of members in attending meetings of committees established by the Board of Regents, including

travel expenses to and from the place of meeting, may be paid by the Institution. Each committee established by the Board of Regents shall keep or cause to be kept minutes of its meetings, which shall be filed and maintained in the office of the Secretary of the Institution.

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*Section 5. Officers*

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**5.01 CHANCELLOR**

The presiding officer of the Institution shall be the Chancellor elected in accordance with the Charter. As chair of the Board of Regents, the Chancellor may call upon the Executive Committee or any other committee established by the Board of Regents for assistance in the performance of the Chancellor's duties. (See also 20 U.S.C. §§ 44 and 47.)

**5.02 SECRETARY**

The Secretary, who shall be elected in accordance with the Charter, shall serve as the chief executive officer of the Institution. The Secretary shall be responsible for carrying into effect the policies and programs approved by the Board of Regents and those provided for in applicable laws and regulations. All employees of the Institution shall perform their duties under the Secretary's general direction. The Secretary shall provide for maintaining the Institution's official records, including the proceedings of the Board of Regents, the Executive Committee, and other standing and select committees of the Board. In accordance with applicable statutes and the policies established by the Board of Regents, the Secretary may employ assistants and shall prescribe and document the Institution's organization structure, operating policies and procedures, and delegations of authority. (See also 20 U.S.C. §§ 44 and 46.)

**5.03 UNDER SECRETARY**

In consultation with the Board of Regents, the Secretary shall appoint one or more Under Secretaries who shall be the Secretary's principal officer(s) for administering the operations of the Institution. Pursuant to the written designation and appointment by the Chancellor, an Under Secretary may exercise all the functions and authorities of the Secretary whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of the office. (See also 20 U.S.C. §§ 46, 47, and 48.)

**5.04 CHIEF FINANCIAL OFFICER**

In consultation with the Board of Regents, the Secretary shall designate a Chief Financial Officer, who shall have charge of all funds of the Institution, keep the books of account, designate depositories for funds of the Institution, and generally supervise investment of the Institution's funds as limited by section 4.02. The Chief Financial Officer shall assist the Board of Regents, its



committees, and the Secretary in the exercise of their fiduciary responsibilities. (See also 20 U.S.C. §§ 46 and 48.)

**5.05 GENERAL COUNSEL**

In consultation with the Board of Regents, the Secretary shall appoint a counselor who shall serve as general counsel to the Institution and shall advise the Secretary on such legal matters as may be referred to the counselor by the Secretary or the Board of Regents or its committees. (See also 20 U.S.C. §§ 46 and 48.)

**5.06 OTHER SENIOR OFFICERS**

In consultation with the Board of Regents, the Secretary shall appoint such other senior officers and assign them such titles, duties, and responsibilities as may be necessary for effective management of the Institution's affairs. In accordance with their assigned responsibilities, such other senior officers shall provide advice and assistance to the Secretary and one or more Under Secretaries, and shall provide direction to organization units designated by the Secretary. (See also 20 U.S.C. §§ 46 and 48.)

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*Section 6. Administration*

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**6.01 AUTHORITY TO RECEIVE AND DISPOSE OF PROPERTY**

In accordance with policies established by the Board of Regents, the Secretary may accept or receive for the Institution gifts, grants, bequests, and other transfers of real and personal property, and may hold and dispose of the same in promotion of the purposes of the Institution; and shall administer and budget the use of such property for the purposes specified, if any. The Secretary may delegate this authority to employees of the Institution. (See also 20 U.S.C. § 55.)

**6.02 ENDOWMENT FUND; OTHER NONAPPROPRIATED FUNDS**

Unless otherwise designated by the donor or directed by the Board of Regents, all monies derived from gifts made by will, trust, or similar instrument shall be received in and held in the Smithsonian Institution endowment fund. The Board of Regents may augment the Institution's endowment fund from time to time through budgetary transfers of the net income derived from investments, donations, or revenues from auxiliary activities. (See also 20 U.S.C. §§ 54 to 56.)

**6.03 APPROPRIATED FUNDS**

The Institution shall, in accordance with applicable statutes and administrative regulations, request an annual appropriation for the necessary expenses of the Smithsonian Institution in executing its statutory responsibilities. The Board of Regents shall authorize the expenditure of appropriated funds by the Secretary in accordance with law and the policies of the Board of Regents. (See also 20 U.S.C. §§ 53a, 54, 65a and 70.)

**6.04 BUDGET**

The Secretary shall prepare and recommend an annual budget for consideration by the Board of Regents showing the Institution's program plans, its estimated income from all sources, and the expenditures proposed for the ensuing fiscal year. With approval of the Board of Regents, the Secretary shall submit the Institution's request for appropriations to the Office of Management and Budget for incorporation in the Budget of the United States. The Secretary shall provide all supporting data required for Congressional review of the Institution's budget. When the annual appropriation act has been approved, the Board of Regents shall review the Institution's budget with the Secretary and authorize the Secretary to expend appropriated and nonappropriated funds in accordance with the approved budget. The Secretary may authorize any necessary reprogramming within any limitations established by the Board of Regents or the Congress and may recommend to the Board of Regents any necessary amendment of the Institution's budget. The Institution shall make no expenditures except those authorized in a budget so approved or so amended.

**6.05 AUDIT**

The accounts of the nonappropriated funds of the Institution shall be audited annually by a recognized firm of certified public accountants, which shall submit its report to the Board of Regents. This audit shall be in addition to audits of grant and contract funds conducted by the designated Federal audit agency and audits conducted by the General Accounting Office under other authority with respect to appropriated funds. The Secretary shall provide for an internal audit of the Institution's activities to ensure compliance with statutes and budgetary authorizations in the execution of programs.

**6.06 EXECUTION OF DOCUMENTS**

Pursuant to the Secretary's general authority as chief executive officer of the Institution, the Secretary may execute in the name and behalf of the Institution any documents necessary to the acceptance, transfer, sale or redemption of real or personal property (including the sale or redemption of stocks, bonds, other investments) acquired or to be acquired, held, or disposed of by the Institution through gifts, devises, bequests, or other transfers, and may execute loans, mortgages, sureties, contracts, and any other documents necessary to the administration of the Institution. Such actions shall be reported to the Board of Regents in accordance with policies established by the Board. The Secretary may delegate authority for executing such documents to employees of the Institution.

# EXHIBIT 28

SMITHSONIAN INSTITUTION  
Charter Provisions  
(Title 20, United States Code, Sections 41-70)

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*Chapter 3. Smithsonian Institution,  
National Museums and Art Galleries*

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*Subchapter I- Charter Provisions*

**§ 41. Incorporation of Institution**

The President, the Vice President, the Chief Justice, and the heads of executive departments are constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and have perpetual succession with the powers, limitations, and restrictions hereinafter contained, and no other.

(R.S. § 5579; Feb. 27, 1877, ch. 69, 19 Stat. 253; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

**CODIFICATION**

R.S. § 5579 derived from Acts Aug. 10, 1846, ch. 178 § 1, 9 Stat. 102; Mar. 20, 1871, ch. 1, 17 Stat. 1.

R.S. §§ 5579 to 5594 (codified as sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title) constituted Title 73 of the Revised Statutes, entitled "The Smithsonian Institution." A preamble to these sections was as follows: "James Smithson, esquire, of London, in the kingdom of Great Britain, having by his last will and testament given the whole of his property to the United States of America, to found, at Washington, under the name of the Smithsonian Institution' an establishment for the increase and diffusion of knowledge among men; and the United States having, by an act of Congress, received said property and accepted said trust; therefore, for the faithful execution of said trust, according to the will of the liberal and enlightened donor."

R.S. § 5579, as originally enacted, constituted the President, the Vice-President, the Secretaries of State, the Treasury, War, and the Navy, the Postmaster-General, the Attorney-General, the Chief Justice, the Commissioner of the Patent Office, and the Governor of the District of Columbia, and such persons as they might elect honorary members, an establishment by the name of the "Smithsonian Institution," for the purposes and with the powers specified in the section as set forth here.

**AMENDMENTS**

1894—Act Mar. 12, 1894, substituted "the Chief Justice, and heads of executive departments" for "the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney General, the Chief Justice, the Commissioner of Patents, the governor of the District of Columbia, and other such persons as they may elect honorary members".

1877—Act Feb. 27, 1877, substituted "Patents" for "Patent Office".

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 42. Board of Regents; members**

(a) The business of the Institution shall be conducted at the city of Washington by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine other persons, other than Members of Congress, two of whom shall be

resident in the city of Washington, and seven of whom shall be inhabitants of some State, but no two of them of the same State.

(b) Notwithstanding any other provision of law, the Board of Regents of the Smithsonian Institution may modify the number of members, manner of appointment of members, or tenure of members, of the boards or commissions under the jurisdiction of the Smithsonian Institution, other than—

- (1) the Board of Regents of the Smithsonian Institution; and
- (2) the boards or commissions of the National Gallery of Art, the John F. Kennedy Center for the Performing Arts, and the Woodrow Wilson International Center for Scholars.

(R.S. § 5580; Mar. 12, 1894, ch. 36, 28 Stat. 41; Dec. 15, 1970, Pub. L. 91-551, § 1(a), 84 Stat. 1439, as amended Oct. 21, 1998, Pub. L. 105-277, Div. A., § 101(e) [Title III, § 355], 112 Stat. 2681-303.)

#### CODIFICATION

R.S. § 5580 derived from Acts Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103; Jan. 10, 1865, ch. 11, 13 Stat. 420; Mar. 20, 1871, ch. 1, 17 Stat. 1.

#### AMENDMENTS

1998— Act Oct. 21, 1998, designated the existing provisions as subsec. (a) and added subsection (b).

1970—Pub. L. 91-551 authorized three additional persons on the Board of Regents.

1894—Act Mar. 12, 1894, struck out “The Governor of the District of Columbia,” after “the Chief Justice of the United States.”

#### CROSS REFERENCES

National Zoological Park, administration by Regents of Smithsonian Institution, see section 81 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 43. Appointment of regents; terms of office; vacancies

The regents to be selected shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the nine other persons by joint resolution of the Congress. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner to serve until the fourth Wednesday in December in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other nine members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress.

(R.S. § 5581; Dec. 15, 1970, Pub. L. 91-551, § 1(b), (c), 84 Stat. 1440.)

#### CODIFICATION

R.S. § 5581 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

#### AMENDMENTS

1970—Pub. L. 91-551 authorized the appointments of three additional members of the Board by joint resolution of the Congress.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 44. Organization of board; expenses; gratuitous services**

The Board of Regents shall meet in the city of Washington and elect one of their number as chancellor, who shall be the presiding officer of the Board of Regents, and called the chancellor of the Smithsonian Institution, and a suitable person as Secretary of the institution, who shall also be the secretary of the Board of Regents. The board shall also elect three of their own body as an executive committee, and shall fix the time for the regular meetings of the board; and, on application of any three of the regents to the Secretary of the institution, it shall be his duty to appoint a special meeting of the Board of Regents, of which he shall give notice, by letter, to each of the members; and, at any meeting of the board, eight shall constitute a quorum to do business. Each member of the board shall be paid his necessary traveling and other actual expenses in attending meetings of the board, which shall be audited by the executive committee, and recorded by the Secretary of the board; but his service as Regent shall be gratuitous.

(R.S. § 5582; Dec. 15, 1970, Pub. L. 91-551, § 1(d), 84 Stat. 1440.)

**CODIFICATION**

R.S. § 5582 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

**AMENDMENTS**

1970—Pub. L. 91-551 increased the number of members required to constitute a quorum from five to eight.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 45. Special meetings of members**

The members of the institution may hold stated and special meetings, for the supervision of the affairs of the institution and the advice and instruction of the Board of Regents, to be called in the manner provided for in the bylaws of the institution, at which the President, and in his absence the Vice President, shall preside.

(R.S. § 5585.)

**CODIFICATION**

R.S. § 5585 derived from Act Aug. 10, 1846, ch. 178, § 8, 9 Stat. 103.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 46. Duties of Secretary**

The Secretary of the Board of Regents shall take charge of the building and property of the institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in the institution until no longer needed in conducting current business; and shall also discharge the duties of librarian and of keeper of the museum, and may, with the consent of the Board of Regents, employ assistants.

(R.S. § 5583; Oct. 25, 1951, ch. 562, § 2(4), 65 Stat. 639.)

#### CODIFICATION

R.S. § 5583 derived from Act Aug. 10, 1846, ch. 178, § 7, 9 Stat. 105.

#### AMENDMENTS

1951—Act Oct. 25, 1951, inserted “until no longer needed in conducting current business”.

#### CROSS REFERENCES

Management and disposition of records, see sections 2101 et seq., 2301 et seq., 2501 et seq., 2901 et seq., 3101 et seq., and 3301 et seq. of Title 44, Public Printing and Documents.

Statement of expenditures, see section 49 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 46a. Employment of aliens by Secretary

The Secretary of the Smithsonian Institution, subject to adequate security and other investigations as he may determine to be appropriate, and subject further to a prior determination by him that no qualified United States citizen is available for the particular position involved, is authorized to employ and compensate aliens in a scientific or technical capacity at authorized rates of compensation without regard to statutory provisions prohibiting payment of compensation to aliens.

(Pub. L. 88-549, Aug. 31, 1964, 78 Stat. 754.)

### § 47. Acting Secretary

The chancellor of the Smithsonian Institution may, by an instrument in writing filed in the office of the Secretary thereof, designate and appoint a suitable person to act as Secretary of the Institution when there shall be a vacancy in said office, and whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of his office; and in such case the person so appointed may perform all the duties imposed on the Secretary by law until the vacancy shall be filled or such inability shall cease. The said chancellor may change such designation and appointment from time to time as the interests of the institution may in his judgment require.

(May 13, 1884, ch. 44, 23 Stat. 21.)

#### PRIOR PROVISIONS

Act May 13, 1884, is derived from Act Jan. 24, 1879, ch. 21, 20 Stat. 264.

### § 48. Salary and removal of Secretary and assistants

The Secretary and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Regents; and shall be removable by the Board of Regents whenever, in their judgment, the interests of the institution require such removal.

(R.S. § 5584.)

#### CODIFICATION

R.S. § 5584 derived from Act Aug. 10, 1846, ch. 178, § 7, 9 Stat. 105.

Provisions which related to semi-annual payments on the first day of January and July have been omitted.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

## § 49. Statement of expenditures

The Secretary shall submit to Congress annually at the beginning of each regular session thereof a detailed statement of the expenditures of the preceding fiscal year, under appropriations for "International Exchanges," "North American Ethnology," and the "National Museum."

(Oct. 2, 1888, ch. 1069, 25 Stat. 529.)

### CROSS REFERENCES

Annual report of salaries, see section 58 of this title.

Printing and distribution of reports of Smithsonian Institution, see section 1341 of Title 44, Public Printing and Documents.

## § 50. Reception and arrangement of specimens and objects of art

Whenever suitable arrangements can be made from time to time for their reception, all objects of art and of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging to the United States, which may be in the city of Washington, in whosoever custody they may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them, and shall be so arranged and classified in the building erected for the Institution as best to facilitate the examination and study of them; and whenever new specimens in natural history, geology, or mineralogy are obtained for the museum of the Institution, by exchanges of duplicate specimens, which the Regents may in their discretion make, or by donation, which they may receive, or otherwise, the Regents shall cause such new specimens to be appropriately classed and arranged. The minerals, books, manuscripts, and other property of James Smithson, which have been received by the Government of the United States, shall be preserved separate and apart from other property of the Institution.

(R. S. § 5586.)

### HISTORICAL AND STATUTORY NOTES

#### CODIFICATION

R.S. § 5586 derived from Act Aug. 10, 1846, ch. 178, § 6, 9 Stat. 105.

**PRESERVATION OF SEPTEMBER 11<sup>th</sup> ARTIFACTS IN NATIONAL MUSEUM OF AMERICAN HISTORY**  
Pub.L. 107-117, Div. B, Ch. 7, § 701, Jan. 10, 2002, 115 Stat. 2311, provided that:

**"(a) In general.**—The Secretary of the Smithsonian Institution shall collect and preserve in the National Museum of American History artifacts relating to the September 11<sup>th</sup> attacks on the World Trade Center and the Pentagon.

**"(b) Types of artifacts.**—In carrying out subsection (a) [of this note], the Secretary of the Smithsonian Institution shall consider collecting and preserving—

**"(1)** pieces of the World Trade Center and the Pentagon.

**"(2)** still and video images made by private individuals and the media;

**"(3)** personal narratives of survivors, rescuers, and government officials; and

**"(4)** other artifacts, recordings, and testimonials that the Secretary of the Smithsonian Institution determines have lasting historical significance.

**"(c) Authorization of appropriations.**— There is authorized to be appropriated to the Smithsonian Institution \$5,000,000 to carry out this section [this note]."

**THE SMITHSONIAN ASTROPHYSICAL OBSERVATORY SUBMILLIMETER ARRAY**  
Pub. L. 106-383, §§ 1 to 2, Oct. 27, 2000, 114 Stat. 1459, provided that:



**"Sec. 1. Facility authorized.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, construct, and equip laboratory, administrative, and support space to house base operations for the Smithsonian Astrophysical Observatory Submillimeter Array located on Mauna Kea at Hilo, Hawaii.

**"Sec. 2. Authorization of appropriations.**

"There are authorized to be appropriated to the Board of Regents of the Smithsonian Institution to carry out this Act, \$2,000,000 for fiscal year 2001, and \$2,500,000 for fiscal year 2002, which shall remain available until expended."

**SMITHSONIAN INSTITUTION TRANSPORTATION PROGRAM**

Pub. L. 105-178, Title I, § 1214(b), June 9, 1998, 112 Stat. 204, provided that:

"(1) **In general.**—The Secretary of Transportation shall allocate amounts made available by this subsection for obligation at the discretion of the Secretary of the Smithsonian Institution, in consultation with the Secretary of Transportation, to carry out projects and activities described in paragraph (2).

"(2) **Eligible uses.**—Amounts allocated under paragraph (1) may be obligated only—

"(A) for transportation-related exhibitions, exhibits, and educational outreach programs;

"(B) to enhance the care and protection of the Nation's collection of transportation-related artifacts;

"(C) to acquire historically significant transportation-related artifacts; and

"(D) to support research programs within the Smithsonian Institution that document the history and evolution of transportation, in cooperation with other museums in the United States.

"(3) **Authorization of appropriations.**—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.

"(4) **Applicability of Title 23.**—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code [section 101 et seq. of Title 23]; except that the Federal share of the cost of any project or activity under this subsection shall be 100 percent and such funds shall remain available until expended."

**NATIONAL MUSEUM OF HEALTH AND MEDICINE**

NOTE: Pub. L. 105-78, Title VII, §§ 701, 703 to 708, Nov. 13, 1997, 111 Stat. 1524, the National Health Museum Development Act, which authorized construction of the National Health Museum and provided for the establishment and termination of the National Health Museum Commission, was repealed by Pub. L. 107-303, Title III, § 303, Nov. 27, 2002, 116 Stat. 2361.

[The National Health Museum had no affiliation with the Smithsonian Institution, other than being a "National" museum.]

**WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING**

Pub. L. 103-151, Nov. 24, 1993, 107 Stat. 1515, provided that:

**"SECTION 1. PLANNING DESIGN, AND CONSTRUCTION OF WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, and construct the West Court of the National Museum of Natural History building.

**"SECTION 2. FUNDING.**

"No appropriated funds may be used to pay any expense of the planning, design, and construction authorized by section 1."

**EAST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY MUSEUM**

Pub. L. 101-455, Oct. 24, 1990, 104 Stat. 1067, as amended by Pub. L. 103-98, § 1(a), Oct. 6, 1993, 107 Stat. 1015, provided that:

**"SECTION 1. ADDITIONAL SPACE IN NATIONAL MUSEUM OF NATURAL HISTORY.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, construct, and equip approximately 80,000 square feet of space in the East Court of the National Museum of Natural History building.

**"SECTION 2. AUTHORIZATION OF APPROPRIATIONS.**

"There is authorized to be appropriated to the Smithsonian Institution for fiscal year 1991 and succeeding fiscal years not to exceed \$30,000,000 to carry out this Act."

[Section 1(b) of Pub. L. 103-98 provided that: "The amendment made by subsection (a) [amending section 2 of Pub. L. 101-455, set out above] shall take effect as of October 24, 1990."]

**CONSTRUCTION OF CHARLES McC. MATHIAS, JR. LABORATORY FOR ENVIRONMENTAL RESEARCH**  
Pub. L. 99-617, § 1, Nov. 6, 1986, 100 Stat. 3488, provided that:

"(a) **Construction authorization.**—The Board of Regents of the Smithsonian Institution is authorized to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research.

"(b) **Location.**—The Charles McC. Mathias, Jr. Laboratory for Environmental Research shall be located at the Smithsonian Environmental Research Center, a bureau of the Smithsonian Institution, located at Edgewater, Maryland.

"(c) **Authorization of appropriations.**—Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$1,000,000 to carry out the purposes of this section.

"(d) **Transfer of funds.**—Any portion of the sums appropriated to carry out the purposes of this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

**SMITHSONIAN ASTROPHYSICAL OBSERVATORY AND SMITHSONIAN TROPICAL RESEARCH INSTITUTE; AUTHORIZATION OF CONSTRUCTION AND APPROPRIATIONS**

Pub. L. 99-423, Sept. 30, 1986, 100 Stat. 963, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to plan and construct facilities for the Smithsonian Astrophysical Observatory and the Smithsonian Tropical Research Institute.

"Sec. 2. Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution:

"(a) \$4,500,000 for the Smithsonian Astrophysical Observatory; and

"(b) \$11,100,000 for the Smithsonian Tropical Research Institute.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

**FRED LAWRENCE WHIPPLE OBSERVATORY; PURCHASE OF LAND**

Pub. L. 98-73, Aug. 11, 1983, 97 Stat. 406, provided:

"That the Smithsonian Institution is authorized to purchase land in Santa Cruz County, Arizona, for the permanent headquarters of the Fred Lawrence Whipple Observatory.

"Sec. 2. Effective October 1, 1984, there is authorized to be appropriated \$150,000 to carry out the purposes of this Act."

**CONSTRUCTION OF NATIONAL MUSEUM OF AFRICAN ART, CENTER FOR EASTERN ART, AND STRUCTURES FOR RELATED EDUCATIONAL FACILITIES**

Pub. L. 97-203, §§ 1 to 3, June 24, 1982, 96 Stat. 129, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to construct a building for the National Museum of African Art and a center for Eastern art together with structures for related educational activities in the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street Southwest, in the city of Washington.

"Sec. 2. Effective October 1, 1982, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$36,500,000 to carry out the purposes of this Act. Except for funds obligated or expended for planning, administration, and management expenses, and architectural or other consulting services, no funds appropriated pursuant to this section shall be obligated or expended until such time as there is available to such Board, from private donations or from other non-Federal sources, a sum which, when combined with the funds so appropriated, is sufficient to carry out the purposes of this Act.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

#### SMITHSONIAN INSTITUTION; DEVELOPMENT OF PROPERTY ADJACENT TO ORIGINAL BUILDING

Pub. L. 96-36, July 20, 1979, 93 Stat. 94, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to plan for the development of the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street, Southwest, in the city of Washington.

"Sec. 2. Effective October 1, 1979, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$500,000 to carry out the purposes of this Act.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

#### SMITHSONIAN INSTITUTION PLANS FOR AND CONSTRUCTION OF MUSEUM SUPPORT FACILITIES; APPROVAL OF PLANS AND SPECIFICATIONS; SITUS; TRANSFER OF LAND; APPROPRIATIONS; CONTRACTS BY GENERAL SERVICES ADMINISTRATION

Pub. L. 94-98, Sept. 19, 1975, 89 Stat. 480, as amended by Pub. L. 95-569, Nov. 2, 1978, 92 Stat. 2444, provided:

"The Regents of the Smithsonian Institution are authorized to prepare plans for, and to construct, museum support facilities to be used for (1) the care, curation, conservation, deposit, preparation, and study of the national collections of scientific, historic, and artistic objects, specimens, and artifacts; (2) the related documentation of such collections of the Smithsonian Institution; and (3) the training of museum conservators. No appropriation shall be made to construct the facilities authorized by this Act until the Committee on Public Works and Transportation of the House of Representatives and the Committee on Rules and Administration of the Senate, by resolution approve the final plans and specifications of such facilities.

"Sec. 2. The museum support facilities referred to in section 1 shall be located on federally owned land within the metropolitan area of Washington, District of Columbia. Any Federal agency is authorized to transfer land under its jurisdiction to the Smithsonian Institution for such purposes without reimbursement.

"Sec. 3. There is authorized to be appropriated to the Smithsonian Institution \$21,500,000 to carry out the purposes of this Act. Any portion of the sums appropriated for such purposes may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

[Amendment of section 3 of this Act effective Oct. 1, 1979.]

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Public Works and Transportation of the House of Representatives treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives, see section 1(a)(9) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

#### NATIONAL MUSEUM

The National Museum was not created by any express statutory provision for that purpose. It was first mentioned in an appropriation for postage for "the National Museum in the Smithsonian Institution," contained in Act June 20, 1874, ch. 328, § 1, 18 Stat. 103. An appropriation for a building for the use of the National Museum was made by Act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 397, and annual appropriations have continuously been made for expenses of heating, etc., such building.

#### NATIONAL MUSEUM EXHIBIT

Res. Feb. 28, 1922, ch. 86, 42 Stat. 399, authorized the Secretary of State to transfer to the custody of the Secretary of the Institution for safekeeping and exhibition in the National Museum the sword of George Washington and the staff of Benjamin Franklin, presented by Samuel T. Washington, and the sword of Andrew Jackson, presented by the family of General Robert Armstrong.

#### TRANSPORTATION OF PROPERTY

The Quartermaster-General and his officers were required to receive and transport property for the National Museum by a provision of Act July 5, 1884, ch. 217, 23 Stat. 107.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

## NOTES OF DECISIONS

Placement of natural history objects in Institution

### 1. Placement of natural history objects in Institution

The objects of natural history belonging to the government are to be placed in the Smithsonian Institution. 1857, 9 Op.Atty.Gen.46.

## § 50a. Gellatly art collection; estimates of sums needed for preservation and maintenance

The Smithsonian Institution is authorized to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the John Gellatly art collection.

(June 5, 1929, ch. 9, 46 Stat. 5)

## NOTES OF DECISIONS

Validity of transfer 1

### 1. Validity of transfer

Where owner of valuable art collection offered it to the Smithsonian Institution upon certain conditions, and offer was accepted and transfer was completed, and Institution made payments of rent on gallery then under lease in New York, made payments of salary to the curator and expended sums for maintenance and upkeep, payments did not constitute a consideration so as to invalidate the transfer as a gift. Gellatly v. Wetmore, C.A.D.C. 1949, 177 F.2d 73, 85 U.S.App.D.C. 227, certiorari denied 70 S.Ct. 513, 339 U.S. 905, 94 L.Ed. 1334.

Where owner of valuable art collection signed a formal document of transfer of art collection to the Smithsonian Institution, and Congress by acts approved, and appropriated funds necessary to meet conditions of the transfer and thereafter the owner of the collection married a woman who was ignorant of the transfer, which was never repudiated by the owner but was expressly confirmed prior to his death, the transfer was binding, and there was no basis in law or in equity to set aside the transfer or to allow a recovery in behalf of the owner's estate. Gellatly v. U.S. Ct.Cl. 1947, 71 F.Supp. 357, 108 Ct.Cl. 650.

## § 51. Library

The Regents shall make, from the interest of the fund, an appropriation, not exceeding an average of \$25,000 annually, for the gradual formation of a library composed of valuable works pertaining to all departments of human knowledge.

(R.S. § 5587.)

## CODIFICATION

R.S. § 5587 derived from act Aug. 10, 1846, ch. 178, § 8, 9 Stat. 105.

## PUBLIC USE OF RESEARCH AND STUDY FACILITIES OF CERTAIN INSTITUTIONS

Under provisions of R.S. § 94 and act Mar. 3, 1875, ch. 179, 18 Stat. 512, the Joint Committee on the Library of Congress was authorized to extend the use of the Library to the Regents of the Smithsonian Institution. These provisions were not classified to the Code, being rendered superfluous by a general declaration of public policy by Congress, by a joint resolution adopted Apr. 12, 1892, 27 Stat. 395, to the effect that facilities for study and research in the Library of Congress, the National Museum, and similar institutions shall be afforded investigators, students, etc., in the several states and territories as well as in the District of Columbia.

#### CROSS REFERENCES

Appropriation of interest moneys, see section 54 of this title.

Regulations governing Smithsonian Institution; see sections 151 and 152 of Title 2, The Congress.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### **§ 52. Evidence of title to site and buildings**

The site and lands selected for buildings for the Smithsonian Institution shall be deemed appropriated to the institution, and the record of the description of such site and lands, or a copy thereof, certified by the chancellor and Secretary of the Board of Regents, shall be received as evidence in all courts of the extent and boundaries of the lands appropriated to the institution.

(R.S. § 5588.)

#### CODIFICATION

R.S. § 5588 derived from Act Aug. 10, 1846, ch. 178, § 4, 9 Stat. 104.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on this section, see note of Advisory Committee set out under rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Proof of official record, see rule 44.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in s 57, 67 of this title.

### **§ 53. Protection of property**

All laws for the protection of public property in the city of Washington shall apply to, and be in force for, the protection of the lands, buildings, and other property of the Smithsonian Institution. All moneys recovered by or accruing to the Institution shall be paid into the Treasury of the United States, to the credit of the Smithsonian bequest, and separately accounted for.

(R. S. § 5589.)

#### CODIFICATION

R.S. § 5589 derived from Act Aug. 10, 1846, ch. 178, § 5, 9 Stat. 104.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### **§ 53a. Authorization of appropriations**

Appropriations are authorized for the maintenance of the Astrophysical Observatory and the making of solar observations at high altitudes; for repairs and alterations of buildings and grounds occupied by the Smithsonian Institution in the District of Columbia and elsewhere; and for preparation of manuscripts, drawings, and illustrations for publications.

(Aug. 22, 1949, ch. 494, § 2, 63 Stat. 623.)

### **§ 54. Appropriation of interest**

So much of the property of James Smithson as has been received in money, and paid into the Treasury of the United States, being the sum of \$541,379.63, shall be lent to the United States

Treasury and invested in public debt securities with maturities requested by the Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby appropriated for the perpetual maintenance and support of the Smithsonian Institution; and all expenditures and appropriations to be made, from time to time, to the purposes of the Institution shall be exclusively from the accruing interest, and not from the principal of the fund. All the moneys and stocks which have been, or may hereafter be, received into the Treasury of the United States, on account of the fund bequeathed by James Smithson, are hereby pledged to refund to the Treasury of the United States the sums hereby appropriated.

(R. S. § 5590; Pub. L. 97-199, § 1, June 22, 1982, 96 Stat. 121.)

#### CODIFICATION

R.S. § 5590 derived from Acts Aug. 10, 1846, ch. 178, § 2, 9 Stat. 102; Feb. 5, 1867, ch. 34, § 2, 14 Stat. 391.

#### AMENDMENTS

1982—Pub. L. 97-199 substituted “and invested in public debt securities with maturities requested by the Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby” for “, at 6 per centum per annum interest; and 6 per centum interest on the trust-fund and residuary legacy received into the United States Treasury, payable in half-yearly payments, on the first of January and July in each year, is”, substituted “purposes of the Institution” for “purposes of the institution”, and substituted “are hereby pledged” for “are pledged”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97-199 provided that:

“The amendment made by the first section [amending this section] shall apply with respect to fiscal years beginning after September 30, 1982.”

#### CROSS REFERENCES

Expenses of Smithsonian Institution Trust Fund, see section 1321 of Title 31, Money and Finance.  
Permanent indefinite appropriation for Smithsonian Institution, see section 1305 of Title 31.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title; title 31, section 1305.

### § 55. Acceptance of other sums

The Secretary of the Treasury is authorized and directed to receive into the Treasury, on the same terms as the original bequest of James Smithson, such sums as the Regents may, from time to time, see fit to deposit, not exceeding, with the original bequest, the sum of \$1,000,000. This shall not operate as a limitation on the power of the Smithsonian Institution to receive money or other property by gift, bequest, or devise, and to hold and dispose of the same in promotion of the purposes thereof.

(R.S. § 5591; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

#### CODIFICATION

R.S. § 5591 derived from Act Feb. 5, 1867, ch. 34, § 1, 14 Stat. 391.

#### AMENDMENTS

1894—Act Mar. 12, 1894, made the limitation on deposits into the treasury inapplicable to receipt of gifts, bequests and devises and dispositions of money or other property.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**NOTES OF DECISIONS**

**1. Fund raising**

The Board of Regents of Smithsonian Institution may employ a firm of experts to assist in increasing the endowment of the Institution, said firm being paid out of contributions to be donated for that purpose. 1924, 34 Op.Atty.Gen. 338

**2. Limitations on interest payments**

This section does not place a limitation on the amount which the Smithsonian Institution may receive but only limits the amount upon which the Treasury of the United States is authorized to pay interest at the rate of 6% per annum. 1924, 34 Op.Atty.Gen.338.

**§ 56. Disposal of unappropriated money**

The Regents are authorized to make such disposal of any other moneys which have accrued, or shall hereafter accrue, as interest upon the Smithsonian fund, not herein appropriated, or not required for the purposes herein provided, as they shall deem best suited for the promotion of the purpose of the testator.

(R. S. § 5592.)

**CODIFICATION**

R.S. § 5592 derived from Act Aug. 10, 1846, ch. 178, § 9, 9 Stat. 105.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**NOTES OF DECISIONS**

**1. Disposal of accumulated interest**

While the principal of the endowment fund of the Smithsonian Institution may not be appropriated by the Board of Regents, the accumulated interest thereon may be used by the Board in promotion of the purpose of the endowment. 1924, 34 Op.Atty.Gen. 338.

**§ 57. Disbursements**

Whenever money is required for the payment of the debts or performance of the contracts of the institution, incurred or entered into in conformity with the provisions of sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title, or for making the purchases and executing the objects authorized by said sections, the Board of Regents, or the executive committee thereof, may certify to the chancellor and secretary of the board that such sum of money is required, whereupon they shall examine the same, and, if they shall approve thereof, shall certify the same to the proper officer of the Treasury for payment. The board shall submit to Congress, at each session thereof, a report of the operations, expenditures, and condition of the institution.

(R.S. § 5593.)

**CODIFICATION**

R.S. § 5593 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 67 of this title.

### § 58. Omitted

## HISTORICAL AND STATUTORY NOTES

### CODIFICATION

Section, Act Mar. 3, 1899, c. 424, § 1, 30 Stat. 1085, which required that the salaries of all officers and employees paid from appropriations under the Smithsonian Institution be reported to Congress annually, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under 31 U.S.C.A. § 1113. See, also, page 192 of House Document No. 103-7.

### § 59. Collections of National Ocean Survey, Geological Survey, and others deposited in National Museum

All collections of rocks, minerals, soils, fossils, and objects of natural history, archaeology, and ethnology, made by the National Ocean Survey, the United States Geological Survey, or by any other parties for the Government of the United States, when no longer needed for investigations in progress shall be deposited in the National Museum.

(Mar. 3, 1879, ch. 182, § 1, 20 Stat. 394; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Nov. 13, 1991, Pub. L. 102-154, Title I, 105 Stat. 1000; May 18, 1992, Pub. L. 102-285, § 10(a), 106 Stat. 171.)

### CODIFICATION

Words "Coast and Interior Survey" appearing in Act Mar. 3, 1879, were in prior editions of the Code changed to "Coast and Geodetic Survey." Congress never created a Coast and Interior Survey. In a communication dated Nov. 6, 1940, the Director of the Geological Survey explained that the words "Coast and Interior Survey" were inadvertently incorporated upon authority of report contained in Senate Misc. Doc. No. 9, 45th Congress, 3d Session, which recommended the "Coast and Geodetic Survey" be changed to "United States Coast and Interior Survey" and an organization be created in the Interior Department to be known as the "United States Geological Survey." Congress adopted only the latter suggestion.

The Coast and Geodetic Survey was consolidated with the National Weather Bureau in 1965 to form the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. The Environmental Science Services Administration was abolished in 1970 and its personnel, property, records, etc., were transferred to the National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090. By order of the Acting Associate Administrator of the National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, the Coast and Geodetic Survey was redesignated the National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

### CHANGE OF NAME

Pub. L. 102-285, § 10(a), May 18, 1992, 106 Stat. 171, redesignated the Geological Survey and provided that on and after May 18, 1992, it shall be known as the United States Geological Survey. An earlier statute [Pub. L. 102-154, Title I, Nov. 13, 1991, 105 Stat. 1000] had provided for the identical change of name effective on and after Nov. 13, 1991. See note under section 31 of Title 43, Public Lands.

### NATIONAL MUSEUM

Establishment of the National Museum, see note set out under section 50 of this title.

### NATIONAL MUSEUM OF AMERICAN HISTORY

Pub. L. 96-441, § 2, Oct. 13, 1980, 94 Stat. 1884, provided that: "The bureau of the Smithsonian Institution known as the Museum of History and Technology and so referred to in the Act entitled 'An Act to authorize the construction of a building for a Museum of History and Technology for the Smithsonian Institution, including the preparation of plans



and specifications, and all other work incidental thereto', approved June 28, 1955 (20 U.S.C. 59 note), shall be known as the 'National Museum of American History'."

For provision deeming references to the Museum of History and Technology in laws and regulations to be references to the National Museum of American History, see section 3 of Pub. L. 96-441, set out as a note under section 71 of this title.

#### MUSEUM OF HISTORY AND TECHNOLOGY FOR THE SMITHSONIAN INSTITUTION

Act June 28, 1955, ch. 201, 69 Stat. 189, authorized construction of a building for a Museum of History and Technology, which was redesignated the National Museum of American History, for the use of the Smithsonian Institution, at a cost not to exceed \$36,000,000.

#### § 60. Army articles furnished to National Museum

The Secretary of the Army is authorized to furnish to the National Museum, for exhibition, upon request therefor by the administrative head thereof, such articles of arms, materiel, equipment, or clothing as have been issued from time to time to the United States Army, or which have been or may hereafter be produced for the United States Army, and which are objects of general interest or of foreign or curious research, provided that such articles can be spared.

(Mar. 4, 1921, ch. 166, § 1, 41 Stat. 1438; July 26, 1947, ch. 343, Title II, § 205(a), 61 Stat. 501; Oct. 31, 1951, ch. 654, § 3(4), 65 Stat. 708.)

#### AMENDMENTS

1951—Act Oct. 31, 1951, struck out "are surplus or" after "articles".

#### CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, Title II, 61 Stat. 501. Section 205(a) of Act July 26, 1947, was repealed by section 53 of Act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### SECRETARY OF AIR FORCE

For transfer of certain personal property and personal property functions, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order No. 39 [§ 2vv], eff. May 18, 1949.

#### §§ 61 to 64. Repealed Oct. 31, 1951, ch. 654, § 1(37) to (40), 65 Stat. 702

#### HISTORICAL AND STATUTORY NOTES

Section 61, Act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 397, required archives, records and materials relating to the Indians of North America to be turned over from the Geographical and Geological Survey to the Smithsonian Institution for purposes of completion of collection of information and its publication.

Section 62, Act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 661, authorized the Secretary of Commerce to transfer instruments of historical value of the Coast and Geodetic Survey [the National Ocean Survey] to the Smithsonian Institution. See section 483 of Title 40, Public Buildings, Property, and Works.

Section 63, Act June 5, 1920, ch. 235, § 1, 41 Stat. 930, related to transfer, by the Secretary of Commerce, of Coast and Geodetic Survey [the National Ocean Survey] instruments of historical value, to educational institutions and museums. See sections 483 and 484 of Title 40.

Section 64, Act Mar. 3, 1883, ch. 143, 22 Stat. 629, related to distribution of specimens of National Museum and Bureau of Fisheries to schools and colleges. See sections 483 and 484 of Title 40.

**§ 65. Repealed. Pub. L. 89-674, § 3, Oct. 15, 1966, 80 Stat. 953**

Section, Act July 7, 1884, ch. 332, 23 Stat. 214, required the Director of the National Museum to report annually to Congress on the progress of the Museum during the year and its present condition. See section 65a of this title.

**§ 65a. Director of the National Museum**

**(a) Duties; programs and studies; annual report to Congress**

The Director of the National Museum under the direction of the Secretary of the Smithsonian Institution shall—

(1) cooperate with museums and their professional organizations in a continuing study of museum problems and opportunities, both in the United States and abroad;

(2) prepare and carry out programs by grant, contract, or directly for training career employees in museum practices in cooperation with museums, their professional organizations, and institutions of higher education either at the Smithsonian Institution or at the cooperating museum, organization, or institutions;

(3) prepare and distribute significant museum publications;

(4) perform research on, and otherwise contribute to, the development of museum techniques, with emphasis on museum conservation and the development of a national institute for museum conservation;

(5) cooperate with departments and agencies of the Government of the United States operating, assisting, or otherwise concerned with museums; and

(6) report annually to the Congress on progress in these activities.

**(b) Authorization of appropriations.**

There are hereby authorized to be appropriated to the Smithsonian Institution for the fiscal year 1981, the sum of \$803,000, and for the fiscal year 1982, the sum of \$1,000,000.

(Pub. L. 89-674, § 2, Oct. 15, 1966, 80 Stat. 953; Pub. L. 91-629, §§ 1, 2, Dec. 31, 1970, 84 Stat. 1875; Pub. L. 93-345, §§ 1, 2, July 12, 1974, 88 Stat. 339; Pub. L. 94-336, July 1, 1976, 90 Stat. 795; Pub. L. 96-268, June 13, 1980, 94 Stat. 485.)

**AMENDMENTS**

1980—Subsec. (b). Pub. L. 96-268 substituted provisions authorizing appropriations of \$803,000 for fiscal year 1981 and \$1,000,000 for fiscal year 1982 for provisions which had authorized appropriations of \$1,000,000 each year for fiscal years 1978, 1979, and 1980.

1976—Subsec. (b). Pub. L. 94-336 substituted provisions authorizing the appropriation of \$1,000,000 each year for fiscal years 1978, 1979, and 1980, for provisions under which there had been authorized to be appropriated whatever sums as might be necessary to carry out the purposes of the section, with a proviso that no more than \$1,000,000 could be appropriated annually through fiscal year 1977, of which no less than \$200,000 was to be allocated and used to carry out subsec. (a)(4) of this section.

1974—Subsec. (a)(4). Pub. L. 93-345, § 1, inserted “, with emphasis on museum conservation and the development of a national institute for museum conservation” following “museum techniques”.

Subsec. (b). Pub. L. 93-345, § 2, substituted provisions limiting to \$1,000,000 the amount which may be appropriated annually through fiscal year 1977, with no less than \$200,000 annually to be allocated and used to carry out the purposes of subsection (a)(4) of this section for provisions limiting to \$1,000,000 the amount which could be appropriated annually through fiscal year 1974, of which \$300,000 annually had to be allocated and used according to the formula of 33 1/3 per centum for purposes of subsec. (a)(2), 33 1/3 per centum for assistance to museums under section 954(c) of this title, and 33 1/3 per centum for assistance to museums under section 956(c) of this title.

1970—Subsec. (a)(2). Pub. L. 91-629, § 2, inserted the provisions that programs be prepared and carried out by grant, contract, or directly and which authorized the training of career employees in museum practices in cooperation with institutions of higher education, and substituted provisions which authorized training programs to be conducted either at the Smithsonian Institution, or at the cooperating museum, organization, or institutions, for provisions which authorized such programs to be conducted at the best locations.

Subsec. (b). Pub. L. 91-629, § 1, substituted provisions which authorized to be appropriated such sums as necessary to carry out the purposes of this section, with no more than \$1,000,000 to be appropriated annually through fiscal year 1974, of which \$300,000, annually, to be allocated in the enumerated manner, for provisions which authorized to be appropriated to carry out this section, not to exceed \$200,000 for the fiscal year ending June 30, 1968, \$250,000 for the fiscal years ending June 30, 1969, and June 30, 1970, and \$300,000 for the fiscal year ending June 30, 1971, and in each subsequent fiscal year, only such sums as the Congress hereafter authorizes by law.

#### SHORT TITLE

Pub. L. 89-674, § 1, provided: "That this Act [enacting this section and repealing section 65 of this title] may be cited as the 'National Museum Act of 1966'."

### **§ 66. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(19), 63 Stat. 400, eff. July 1, 1949, renumbered Sept. 5, 1950, ch. 849, § 6(a),(b), 64 Stat. 583**

Section, Act Mar. 3, 1915, ch. 75, § 1, 38 Stat. 839, related to exchange of typewriters and adding machines. See section 481 of Title 40, Public Buildings, Property, and Works.

### **§ 67. Right of repeal**

Congress may alter, amend, add to, or repeal any of the provisions of sections 41 to 46, 48, 50, 51 to 53, and 54 to 57, of this title; but no contract or individual right made or acquired under such provisions shall be thereby be divested or impaired.

(R. S. § 5594.)

#### CODIFICATION

R.S. § 5594 derived from Act Aug. 10, 1846, ch. 178, § 11, 9 Stat. 106.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57 of this title.

### **§ 68. Repealed Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111**

Section, Act Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081, related to advertisements for proposals for purchases and services. See section 5 of Title 41, Public Contracts.

### **§ 69. Anthropological researches; cooperation of Institution with States, educational institutions, or scientific organizations**

The Secretary of the Smithsonian Institution is hereby authorized to cooperate with any State, educational institution, or scientific organization in the United States to continue independently or in cooperation anthropological researches among the American Indians and the natives of lands under the jurisdiction or protection of the United States and the excavation and preservation of archaeological remains.

(Apr. 10, 1928, ch. 335, § 1, 45 Stat. 413; Aug. 22, 1949, ch. 494, § 1, 63 Stat. 623.)

#### AMENDMENTS

1949—Act Aug. 22, 1949, substituted "to continue independently or in cooperation anthropological" for "for continuing ethnological" and inserted "and the natives of lands under the jurisdiction or protection of the United States".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70 of this title.

**§ 70. Authorization of appropriations; cooperative work**

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$20,000, which shall be available until expended for the purposes stated in section 69 of this title: *Provided*, That at such time as the Smithsonian Institution is satisfied that any State, educational institution, or scientific organization in any of the United States is prepared to contribute to such investigation and when, in its judgment such investigation shall appear meritorious, the Secretary of the Smithsonian Institution may direct that an amount from this sum equal to that contributed by such State, educational institution, or scientific organization, not to exceed \$2,000, to be expended from such sum in any one State during any calendar year, be made available for cooperative investigation: *Provided further*, That all such cooperative work and division of the result thereof shall be under the direction of the Secretary of the Smithsonian Institution: *Provided further*, That where lands are involved which are under the jurisdiction of the Bureau of Indian Affairs or the National Park Service, cooperative work thereon shall be under such regulations and conditions as the Secretary of the Interior may provide.

(Apr. 10, 1928, ch. 335, § 2, 45 Stat. 413.)

Statutory provisions for individual Smithsonian Bureaus are set forth in Title 20, United States Code, Sections 71-85, as follows:

*Subchapter II- National Gallery of Art*

Section 71. Designation of site.

[Included in the "Historical and Statutory Notes" following this section are notes on: (i) Pub.L. 106-385, Oct. 27, 2000, 114 Stat. 1463, Renaming the National Museum of American Art as the Smithsonian American Art Museum; (ii) Pub.L. 98-523, Oct. 19, 1984, 98 Stat. 2433, General Post Office Building; Transfer to Smithsonian Institution for Use as Art Galleries; Relocation of United States International Trade Commission; (iii) Pub.L. 96-441, §§ 1, 3, 4, Oct. 13, 1980, 94 Stat. 1884, renaming the National Collection of Fine Arts as the National Museum of American Art; and the Museum of History and Technology as the National Museum of American History; and (iv) Act Mar. 24, 1937, c. 50, 50 Stat. 51, §§ 1 to 5, designating the then-existing bureau of the Smithsonian Institution known as the national gallery of art as the National Collection of Fine Arts.]

- 71a. Additions; payment of construction costs from trust funds
- 71b. Status of completed addition
- 72. Board of Trustees
  - (a) Establishment
  - (b) Method of selection; term of office
- 73. Acceptance of gift from A. W. Mellon
- 74. Maintenance
  - (a) Pledge of funds for upkeep; authorization of appropriations
  - (b) Acceptance of gifts and other property; investment of funds
  - (c) Appointment and compensation of officers and employees
  - (d) Review of actions of board
- 74a. Permanent loan of funds by Board of Trustees to Treasury; semiannual interest payments to Board
- 75. Authority and functions of the Board
  - (a) Official seal; bylaws, rules, and regulations; quorum
  - (b) Quality of works of art
  - (c) Powers and obligations
  - (d) Annual reports

*Subchapter III- National Portrait Gallery*

- 75a. Definitions
- 75b. Establishment of National Portrait Gallery; functions
- 75c. Creation of National Portrait Gallery Commission; members; functions; powers
- 75d. Acceptance of gifts; title to property
- 75e. Powers of Board
- 75f. Director; appointment and compensation; officers and employees
- 75g. Authorization of appropriations

*Subchapter IV- Smithsonian Gallery of Art*

- 76, 76a. Omitted
- 76b. Functions of the Regents

- (a) Solicitation of construction funds
- (b) Construction of the building
- (c) Name of the building; supervision and control
- 76c. Policy to foster appreciation of past and contemporary art
  - (a) Solicitation of private donations
  - (b) Solicitation of funds to acquire and sell works of art; employ artists, award scholarships, etc.
- 76d. Donations of works of art from Government agencies
- 76e. Housing or exhibiting objects of art possessed by Smithsonian Institution
- 76f. Appointment, compensation, and duties of Director of Gallery; personnel
- 76g. Authorization of appropriations

*Subchapter V- John F. Kennedy Center for the Performing Arts*

- 76h. Board of Trustees
  - (a) Establishment
    - (1) In general
    - (2) Membership
  - (b) General trustees
  - (c) Advisory Committee on the Arts
- 76i. John F. Kennedy Center for the Performing Arts
  - (a) In general
  - (b) Parking garage additions and site improvements
    - (1) In general
    - (2) Availability
    - (3) Limitation on use of appropriated funds
- 76j. Duties of Board
  - (a) Programs, activities, and goals
  - (b) Restriction on additional memorials
- 76k. Powers of Board
  - (a) Solicitation and acceptance of gifts
  - (b) Appointment of officers and employees
  - (c) Transfer of property
  - (d) Transfer of personnel
  - (e) Review of Board actions
  - (f) Collective bargaining
  - (g) Pedestrian and vehicular access
- 76l. Official seal, Board vacancies and quorum, trustee powers and obligations, reports, support services, and review and audit
  - (a) Adoption of seal; Board function notwithstanding vacancies; quorum
  - (b) Powers and obligations of Board in respect of trust funds
  - (c) Annual report of operations and finances
  - (d) Inspector General
  - (e) Property and personnel compensation
- 76m. Repealed
- 76n. Repealed
- 76o. Borrowing authority to finance parking facilities
  - (a) Revenue bonds
  - (b) Interest
  - (c) Kennedy Center Revenue Bond Sinking Fund

- 76p. Acceptance and disposition of gifts to the United States contributed in honor or memory of the late President John F. Kennedy
- 76q. Sole national memorial to the late John F. Kennedy, within the city of Washington and environs
- 76q-1 John F. Kennedy Center Plaza
  - (a) Definitions
  - (b) Responsibility of the Secretary
  - (c) Responsibilities of the Board
  - (d) Responsibilities of the District of Columbia
  - (e) Ownership
  - (f) National highway boundaries
- 76r. Authorization of appropriations
  - (a) Maintenance, repair, and security
  - (b) Capital projects
  - (c) John F. Kennedy Center Plaza
  - (d) Limitation on use of funds
- 76s. Definitions

*Subchapter VI- Joseph H. Hirshhorn Museum and Sculpture Garden*

- 76aa. Site for museum and sculpture garden
  - (a) Appropriation and availability
  - (b) Powers and duties of Board of Regents
- 76bb. Joseph H. Hirshhorn Museum and Sculpture Garden
  - (a) Designation; administration by Board of Regents; cooperation of Board with Secretary of Interior
  - (b) Federal funds
  - (c) Uses
- 76cc. Board of Trustees
  - (a) Establishment; powers and duties
  - (b) Membership; appointment; terms of office; vacancies
- 76dd. Director, administrator, curators, and other personnel; appointment, compensation, and duties
- 76ee. Authorization of appropriations

*Subchapter VII- National Air and Space Museum*

- 77. National Air and Space Museum
  - (a) Establishment; board; administration; reimbursement of expenses
  - (b) Appointment and compensation of head of museum
- 77a. Functions of museum
- 77b. Repealed
- 77c. Museum board
  - (a) Seal; regulations; vacancies
  - (b) Annual report
- 77d. Transfer or loan of aeronautical or space flight equipment to museum

*Subchapter VIII- Paleontological Investigations*

- 78. Cooperation of Smithsonian Institution with State institutions for continuing paleontological investigations

- 78a. Authorization of appropriations; availability of funds; limit on use of funds during fiscal year; supervision; rules and regulations

*Subchapter IX- Canal Zone Biological Area*

79. Barro Colorado Island in Gatun Lake to be set aside  
79a. Preservation of natural features for scientific observation and investigation  
79b. Functions of Smithsonian Institution  
79c. Resident manager; powers and duties; compensation  
79d. Deposit of receipts into Treasury; disbursements  
79e. Authorization of appropriations

*Subchapter X- National Armed Forces Museum Advisory Board*

80. National Armed Forces Museum Advisory Board  
(a) Establishment; functions  
(b) Membership  
(c) Term of office; vacancies  
(d) Quorum  
(e) Compensation, travel, and other expenses  
(f) Biennial organizations; rules and regulations  
80a. Display of contributions of Armed Forces  
(a) Study center; historical collections  
(b) National Air and Space Museum provisions unaffected  
80b. Selection of site  
(a) Authorization of Board of Regents; submission of recommendations to Congress  
(b) Public exhibits and study collections; exhibits of military and naval operations  
80c. Transfer or loan of objects, equipment and records to Smithsonian Institution.  
80d. Authorization of appropriations

*Subchapter XI- Woodrow Wilson International Center for Scholars*

- 80e. Congressional declaration of policy  
80f. Woodrow Wilson International Center for Scholars; Board of Trustees of the Center  
(a) Establishment  
(b) Composition of Board  
(c) Appointment of alternate members by members of Board  
(d) Terms of office; vacancies; reappointment  
(e) Chairman and Vice Chairman of Board  
80g. Powers and duties of Board  
(a) Appointment of scholars; gifts, bequests, etc.; grants; location of Center; physical facilities; compensation of officers; plans and specifications for Center  
(b) Relocation assistance and programs  
80g-1. Hubert H. Humphrey Fellowship in Social and Political Thought  
(a) Establishment in Center  
(b) Selection of Humphrey Fellow; term; compensation  
(c) Functions of Humphrey Fellow; publication and dissemination by Board of Memorial Lectures  
(d) Hubert H. Humphrey Fellowship Trust Fund; establishment, composition, investments, etc.  
(e) Payments to Board from investments for implementation of Fellowship purposes



- (f) Authorization of appropriations
- 80h. Administration; quorum
- 80i. Authorization of appropriations; limitations
- 80j. Audit of accounts

*Subchapter XII- Museum of African Art*

- 80k. Donation and transfer of lands and improvements, works of art, and other assets and property of Museum of African Art to Smithsonian Institution
- 80l. Establishment of Museum of African Art; functions
- 80m. Powers of Board
  - (a) Acquisition, retention, and disposition of property; research and education programs
  - (b) Recommendations of Commission
- 80n. Commission for the Museum of African Art
  - (a) Establishment; duties
  - (b) Membership
  - (c) Terms of office
  - (d) Quorum; vacancies
  - (e) Travel, subsistence, and other expenses
  - (f) Selection of officers; bylaws
- 80o. Director, officers, and employees; appointment, compensation, and duties
- 80p. Funding
  - (a) Federal funds for Museum
  - (b) Authorization of appropriations

*Subchapter XIII- National Museum of the American Indian*

- 80q. Findings
- 80q-1. National Museum of the American Indian
  - (a) Establishment
  - (b) Purposes
- 80q-2. Authority of the Board of Regents to enter into an agreement providing for transfer of Heye Foundation assets to the Smithsonian Institution
- 80q-3. Board of Trustees of the National Museum of the American Indian
  - (a) In general
  - (b) General duties and powers
  - (c) Sole authority
  - (d) Authority
  - (e) Initial appointments to the Board of Trustees
  - (f) Subsequent appointments to the Board of Trustees
  - (g) Quorum
  - (h) Expenses
- 80q-4. Director and staff of the National Museum
  - (a) In general
  - (b) Offer of employment to Heye Foundation employees
  - (c) Applicability of certain civil service laws
- 80q-5. Museum facilities
  - (a) National Museum Mall facility
  - (b) National Museum Heye Center facility
  - (c) Museum Support Center facility
  - (d) Minimum square footage

- (e) Authority to contract with GSA
- (f) Limitation on obligation of Federal funds
- 80q-6. Custom House office space and auditorium
  - (a) Repairs and alterations
  - (b) Authorization of appropriation
- 80q-7. Audubon Terrace
  - (a) In general
  - (b) Determination of charges
  - (c) Definition
- 80q-8. Board of Regents functions with respect to certain agreements and programs
  - (a) Priority to be given to Indian organizations with respect to certain agreements
  - (b) Indian programs
  - (c) Indian Museum Management Fellowships
  - (d) Authorization of appropriations
- 80q-9. Inventory identification, and return of Indian human remains and Indian funerary objects in the possession of the Smithsonian Institution
  - (a) Inventory and identification
  - (b) Notice in case of identification of tribal origin
  - (c) Return of Indian human remains and associated Indian funerary objects
  - (d) Return of Indian funerary objects not associated with Indian human remains
  - (e) Interpretation
  - (f) Authorization of appropriations
- 80q-9a Summary and Repatriation of Unassociated Funerary Objects, Sacred Objects, and Cultural Patrimony
  - (a) Summary
  - (b) Repatriation
  - (c) Standard of Repatriation
  - (d) Museum Obligation
  - (e) Statutory Construction
  - (f) Native Hawaiian Organization. Defined
- 80q-10. Special committee to review the inventory, identification, and return of Indian human remains and Indian funerary objects
  - (a) Establishment; duties
  - (b) Membership
  - (c) Access
  - (d) Pay and expenses of members
  - (e) Rules and administrative support
  - (f) Report and termination
  - (g) Nonapplicability of the Federal Advisory Committee Act
  - (h) Authorization of appropriations
- 80q-11. Inventory, identification, and return of Native Hawaiian human remains and Native Hawaiian funerary objects in the possession of the Smithsonian Institution
  - (a) In general
  - (b) Definitions
- 80q-12. Grants by the Secretary of the Interior to assist Indian tribes with respect to agreements for the return of Indian human remains and Indian funerary objects
  - (a) In general
  - (b) Authorization of appropriations
- 80q-13. Grants by the Secretary of the Interior to assist Indian organizations with respect to renovation and repair of museum facilities and exhibit facilities
  - (a) Grants

- (b) Indian organization contribution
  - (c) Tribal Museum Endowment Fund
  - (d) Annual report
- 80q-14. Definitions
- 80q-15. Authorization of appropriations
- (a) Funding
  - (b) Period of availability

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*Chapter 4. National Zoological Park*

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- 81. Administration by Regents of Smithsonian Institution
- 82. Aid in acquisition of collections
- 83. Omitted
- 84. Plans for buildings and bridges
- 85. Concessions
  - (a) Authorization; use of proceeds for research and educational work
  - (b) Voluntary services

# EXHIBIT 29

**From:** James M. Hobbins  
**To:** Maroni, Alice  
**Date:** Tue, Dec 16, 2003 3:18 PM  
**Subject:** Re: Executive Compensation--We need one more thing

Alice,

I'm quite sure I wrote something for the record on the Executive Committee's action last year at about this time. I'll do some digging and let you know what I can find.

With best wishes,

Jim

>>> Alice Maroni 12/16/03 12:40PM >>>

Sheila and Jim--

I have copied you on a long e-mail from the Institution's accountant in OSP (Fred Heim) who shepards through the A-133 audit (on grants and contracts) for the Institution. He is the hero who is trying to win the day for us on the Secretary's compensation, which you will recall has been questioned by the external auditors.

In his e-mail, Fred recounts what we have provided the auditors. He notes at the end of his e-mail that he still needs evidence that the Regents actually reviewed and approved the Secretary's compensation for FY2002. What written record is there that we could show the auditors to make that point? Minutes? Notes from the Executive Committee meetings?

Fred's note reads, "Nothing we reviewed indicated whether the Board of Regents considered and approved the Secretary's compensation level for fiscal year 2002 (which DCAA has questioned) or what compensation elements were included or what benchmark may have been considered as part of the approval process. If a record of such deliberations exists, it would be appropriate to include that in the limited access folder this office is holding." Do you know of any written material that we could provide Fred for his negotiations?

Additionally, Fred repeats my offer to involve someone at a more senior level to participate in this negotiation--someone who could summarize the process for the auditors--if needed. If we end up going that way, who should be that person?

Thanks for your help with this.  
--Alice

**CC:** Burke, Sheila

# EXHIBIT 30

## **REPORT OF THE AUDIT AND REVIEW COMMITTEE'S REVIEW OF THE SECRETARY'S EXPENSES**

In June 2006 the Secretary and the Audit and Review Committee asked the Chief Financial Officer, with help from an independent auditor, to undertake a six-year review of the Secretary's expenses during fiscal years 2000 through 2005 and determine if travel and other reimbursable expenditures incurred by the Secretary were reasonable in the context of a business expense related to the Smithsonian's mission. By August 2006, the Institution entered into a contract with Cotton & Company to conduct this review, and the Chief Financial Officer determined that the Smithsonian's Inspector General should serve as the Institution's technical representative with respect to that contract.

According to the Cotton & Company December 22, 2006 report and the Inspector General's January 16, 2007 letter transmitting the report to the Audit and Review Committee, the six-year review of 1,040 transactions from 2000 through 2005 disclosed "no evidence of fraud or abuse associated with the expense transactions reviewed." Moreover, the Inspector General expressly found "no evidence that the expenses reviewed were solely for personal benefit." The Inspector General further noted that 96% of these transactions were fully documented. Of the 3% found to be inadequately supported, most of those transactions were deemed to be inadequately supported because only partial documentation, not the original invoices or receipts, could be found. These transactions also occurred primarily in 2000 and 2001, and the Inspector General noted that gaps in records could be attributed to the lapse of time, relocation of the Office of the Comptroller, and staff turnover. The remaining transactions, which represented only 1% (worth \$7,108.89) of all reviewed expenses, were deemed to be unsupported. The Office of the Secretary and the Chief Financial Officer provided the Audit and Review Committee with supplemental documentation establishing the legitimate business purposes for the 4% of transactions deemed in the report to have been unsupported or improperly supported.

The Inspector General specifically questioned two transactions: (1) a \$14,509.40 round-trip charter flight in May 2001, when the Secretary attended the opening of an affiliate museum and, at the request of one of the Institution's largest donors, a function held by a major potential donor and then needed to return to Washington for a Board of Regents meeting; and (2) a \$5,764 reimbursement for the three-day Cambodia portion of the Smithsonian National Board's 2004 China/Cambodia trip for the Secretary's wife. She agreed to represent him and the Smithsonian for the last portion of the trip so he could return to commitments in Washington. After reviewing the relevant supplemental documentation for each of these transactions, as well as the articulated business purpose for each expense, the Audit and Review Committee finds that these transactions were consistent with the Smithsonian's mission and would have been authorized by the Regents as proper business expenses if presented to the Regents for advance approval. Similarly, the Committee recognized that a \$4,811.50 cash award in June 2000 for a long-service employee, while technically unauthorized, was justified in the same manner and would have met with the Regents' approval.

The Inspector General noted that approximately 200 transactions (representing 8% of the cost of all transactions) for gifts and meals for donors and staff were not authorized in some years due to inconsistent policy guidance. According to the Inspector General, most of these transactions were undertaken for legitimate business purposes, none were for the Secretary's personal benefit, and all would have been permissible if the policy had been clear. We agree with the conclusion of the Inspector General with respect to these expenses, and we understand that such policies are already being clarified.

Finally, the Inspector General recommended that "the Board of Regents consider amending the Secretary's employment agreement to specify what level of travel service the Secretary is entitled to... and to make the [Secretary's] housing allowance a single yearly payment with no documentation of expenses or minimum amount required to qualify for the allowance...." In the Audit and Review Committee's opinion, making these terms unambiguous through simple amendments will clarify the intent of the agreement and make the accounting for his compensation more straightforward. The Smithsonian's General Counsel is working on proposed amendments.

At its meeting on January 22, 2007, the Audit and Review Committee met with the Acting Inspector General in executive session to discuss her observations. The Committee also examined the supporting documentation and found both that the documentation was adequate to support the expenses and that the expenses were incurred for demonstrable business purposes, no personal benefit for the Secretary, and in furtherance of the mission of the Institution.

The Audit and Review Committee respectfully suggests the following motion:

**VOTED** that the Board of Regents acknowledges the Inspector General's diligent management of the review of the Secretary's expenses and accepts the Audit and Review Committee's conclusions that the expenses were incurred for demonstrable business purposes in furtherance of the mission of the Institution, the Secretary received no personal gain from any transaction, and there was no evidence of fraud or abuse in any transactions in this review. The Regents authorize the Chairman of the Executive Committee to execute clarifying amendments to the Secretary's employment agreement.



# EXHIBIT 31

LAWRENCE M. SMALL - OUTSIDE ORGANIZATIONS AND COMPENSATION 2000-2007

| Company       | Year         | Cash Compensation <sup>1</sup><br>(includes value deferred) | Potential Income (Stocks) <sup>2</sup>       |                                                              |                                    | Total Received per Year | Number of Work Days Out of Office for Non-SI Obligations <sup>3</sup> | Total Hours Out of Office |                               |
|---------------|--------------|-------------------------------------------------------------|----------------------------------------------|--------------------------------------------------------------|------------------------------------|-------------------------|-----------------------------------------------------------------------|---------------------------|-------------------------------|
|               |              |                                                             | Stock-Based Compensation<br>Number of Shares | Value<br>(on date of grant, or at opening next business day) | Number of Shares Covered by Option |                         |                                                                       |                           | Value<br>(as of May 29, 2007) |
| Marriott      | 2000         | \$43,150                                                    | 1,371                                        | \$45,243                                                     | 2,126                              | \$26,979                | 2                                                                     | 22.5                      |                               |
|               | 2001         | \$50,400                                                    | 3,598                                        | \$149,533                                                    | 1,932                              | \$0                     | 2                                                                     | 18.5                      |                               |
|               | 2002         | \$54,075                                                    |                                              |                                                              |                                    |                         |                                                                       | 2                         | 20.5                          |
|               | 2003         | \$62,300                                                    | 228                                          | \$9,402                                                      |                                    |                         |                                                                       | 2                         | 21.5                          |
|               | 2004         | \$98,800                                                    | 1,714                                        | \$80,588                                                     | 2,986                              | \$0                     |                                                                       | 4                         | 42.5                          |
|               | 2005         | \$102,100                                                   | 1,239                                        | \$77,637                                                     | 3,640                              | \$0                     |                                                                       | 4                         | 38.5                          |
|               | 2006         | \$148,600                                                   | 1,248                                        | \$81,030                                                     | 2,696                              | \$0                     |                                                                       | 4                         | 40                            |
|               | 2007         |                                                             | 2,300                                        | \$106,862                                                    | 2,768                              | \$0                     |                                                                       |                           |                               |
|               | <b>TOTAL</b> | <b>\$559,425</b>                                            | <b>11,698</b>                                | <b>\$550,295</b>                                             | <b>16,148</b>                      | <b>\$26,979</b>         | <b>20</b>                                                             | <b>204</b>                |                               |
| CHUBB Corp.   | 2000         |                                                             | 1,346                                        | \$83,820                                                     |                                    |                         | 4.5                                                                   | 44                        |                               |
|               | 2001         |                                                             | 1,091                                        | \$80,758                                                     | 52,000                             | \$0                     | 7                                                                     | 73.25                     |                               |
|               | 2002         |                                                             | 1,907                                        | \$134,859                                                    | 7,634                              | \$0                     |                                                                       | 8                         | 77                            |
|               | 2003         |                                                             | 1,489                                        | \$82,743                                                     | 108,000                            | \$946,840               |                                                                       | 6                         | 58.25                         |
|               | 2004         |                                                             | 10,585                                       | \$730,271                                                    |                                    |                         |                                                                       | 4.5                       | 46.75                         |
|               | 2005         |                                                             | 2,930                                        | \$233,520                                                    |                                    |                         |                                                                       | 6                         | 63.25                         |
|               | 2006         | \$83,500 <sup>4</sup>                                       | 4,679                                        | \$258,838                                                    |                                    |                         |                                                                       | 6                         | 58.5                          |
| 2007          |              | 39,358                                                      | \$1,364,677                                  | 49,266                                                       | \$804,409                          |                         | 2                                                                     | 22.5 <sup>5</sup>         |                               |
|               | <b>TOTAL</b> | <b>\$83,500</b>                                             | <b>63,385</b>                                | <b>\$2,969,486</b>                                           | <b>\$216,900</b>                   | <b>\$1,751,249</b>      | <b>44</b>                                                             | <b>421</b>                |                               |
| <b>TOTALS</b> |              | <b>\$642,925</b>                                            |                                              | <b>\$3,519,781</b>                                           |                                    | <b>\$1,778,228</b>      | <b>64</b>                                                             | <b>647.5</b>              |                               |

1. Cash compensation records from documents provided to Mr. Small by Marriott and CHUBB Corp., except where otherwise noted.

2. Stock shares and values from registered Form 4 submissions to the SEC. When no value was given for stock option granted on Form 4, opening price of stock on next business day after grant of stock was used to calculate value of shares.

3. Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Mr. Small's Calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.

4. Figure from 3/23/07 CHUBB Corp. proxy statement registered with the SEC.

5. 2007 hours reported were recorded from 1/2007 through 4/2007

# EXHIBIT 32

**LAWRENCE M. SMALL - OUT OF OFFICE 8/2000-9/2006**

| <b>Vacation/ Out of Office</b> | <b>Total Work Days on Vacation</b> |
|--------------------------------|------------------------------------|
| <b>2000</b>                    |                                    |
| 8/1-9/1 Out                    | 24                                 |
| 12/23-12/29 SLC                | 4                                  |
| 12/31 St. Thomas               | 0                                  |
|                                | <b>28</b>                          |
| <b>2001</b>                    |                                    |
| 1/1-1/6- St. Thomas            | 4                                  |
| 1/27-1/31 St. Thomas           | 3                                  |
| 3/23-4/1 St. Thomas            | 6                                  |
| 4/11-4/15 Diving               | 3                                  |
| 5/25-5/28 Brown Commencement   | 0                                  |
| 7/11-7/25 Out                  | 11                                 |
| 8/1-8/31 Vacation              | 23                                 |
| 10/6-10/8 Chicago              | 0                                  |
| 12/21-12/28 SLC                | 5                                  |
| 12/30-12/31 St. Thomas         | 1                                  |
|                                | <b>56</b>                          |
| <b>2002</b>                    |                                    |
| 1/1-1/7 St. Thomas             | 3                                  |
| 1/24-1/31 St. Thomas           | 6                                  |
| 2/20-2/25 Olympics SLC         | 4                                  |
| 3/17-3/24 St. Thomas           | 5                                  |
| 4/9-4/14 Diving                | 4                                  |
| 8/1-8/31 Vacation              | 22                                 |
| 11/29 Out                      | 0                                  |
| 12/11-12/16 Chile              | 4                                  |
| 12/21-12/31 St. Thomas         | 6                                  |
|                                | <b>54</b>                          |
| <b>2003</b>                    |                                    |
| 1/1 St. Thomas                 | 0                                  |
| 2/2-2/9 St. Maarten            | 5                                  |
| 2/28 Denver                    | 1                                  |
| 3/22-3/30 St. Thomas           | 5                                  |
| 4/8-4/13 trip (T&C)            | 4                                  |
| 6/30 Chicago                   | 1                                  |
| 7/25-8/4 Seabourn Spirit       | 7                                  |
| 8/16-9/5 Vacation              | 14                                 |
| 9/12-9/15 Annapolis            | 2                                  |
| 9/18-9/21 Annapolis            | 0                                  |
| 11/19-11/30 Hawaii             | 6                                  |
| 12/18-12/31 Belize             | 9                                  |
|                                | <b>54</b>                          |
| <b>2004</b>                    |                                    |
| 1/16-1/20 Prague               | 2                                  |
| 2/19-2/29 St. Thomas           | 7                                  |
| 3/25-3/31 St. Thomas           | 5                                  |
| 4/16-4/20 Diving               | 3                                  |
| 5/4-5/11 Bahamas               | 6                                  |
| 8/6-9/1 Vacation               | 19                                 |
| 12/17-12/26 On BG              | 6                                  |
| 12/27-12/31 Miami              | 5                                  |
|                                | <b>53</b>                          |

**LAWRENCE M. SMALL - OUT OF OFFICE 8/2000-9/2006**

| <b>Vacation/ Out of Office</b>       | <b>Total Work Days on Vacation</b> |
|--------------------------------------|------------------------------------|
| <b>2005</b>                          |                                    |
| 1/1 Miami                            | 0                                  |
| 1/14-1/21 Milan                      | 5                                  |
| 2/11-2/14 Breckenridge               | 2                                  |
| 2/19-2/27 St. Thomas                 | 4                                  |
| 3/18-3/27 St. Thomas                 | 6                                  |
| 4/8-4/12 Diving                      | 3                                  |
| 7/18-8/3 Vacation                    | 13                                 |
| 8/12-8/14 Denver                     | 1                                  |
| 8/23-9/4 Vacation                    | 9                                  |
| 12/15-12/24 St. Thomas               | 7                                  |
| 12/26-12/31 Cayman                   | 5                                  |
|                                      | <b>55</b>                          |
| <b>2006</b>                          |                                    |
| 1/1-1/2 Cayman                       | 1                                  |
| 1/19-1/26 Vacation                   | 6                                  |
| 2/18-2/26 Vacation                   | 4                                  |
| 3/18-3/26 Vacation                   | 5                                  |
| 4/19-4/23 Diving                     | 3                                  |
| 8/4-9/4 Vacation                     | 20                                 |
|                                      | <b>39</b>                          |
| (From July 2006, records incomplete) |                                    |
|                                      |                                    |
| <b>TOTAL Work Days on Vacation</b>   | <b>339</b>                         |

|                                                      |           |
|------------------------------------------------------|-----------|
| <b>TOTAL Work Days Missed for Non-SI Obligations</b> | <b>64</b> |
|------------------------------------------------------|-----------|

**TOTAL WORK DAYS OUT<sup>1</sup> 403**

1. Out of office on vacation or for non-SI obligations, excluding weekends and federal holidays

# EXHIBIT 33

**SHEILA P. BURKE - OUTSIDE ORGANIZATIONS AND COMPENSATION 2000-2007**

| Company                  | Year         | Cash Compensation <sup>1</sup> | Potential Income (Stocks) <sup>2</sup>    |                                                           |                                    | Total Received per Year | Number of Work Days Out of Office for Non-SI Obligations <sup>3</sup> | Total Hours Out of Office |
|--------------------------|--------------|--------------------------------|-------------------------------------------|-----------------------------------------------------------|------------------------------------|-------------------------|-----------------------------------------------------------------------|---------------------------|
|                          |              |                                | Stock-Based Compensation Number of Shares | Value (on date of grant, or at opening next business day) | Number of Shares Covered by Option |                         |                                                                       |                           |
| Kaiser Family Foundation | 2000         | \$10,750                       |                                           |                                                           |                                    | \$10,750                | 1.5                                                                   | 16.25                     |
|                          | 2001         | \$21,250                       |                                           |                                                           |                                    | \$21,250                | 8                                                                     | 78.50                     |
|                          | 2002         | \$28,000                       |                                           |                                                           |                                    | \$28,000                | 5                                                                     | 53.75                     |
|                          | 2003         | \$28,000                       |                                           |                                                           |                                    | \$28,000                | 6.5                                                                   | 65.25                     |
|                          | 2004         | \$22,000                       |                                           |                                                           |                                    | \$22,000                | 6.5                                                                   | 64.00                     |
|                          | 2005         | \$29,250                       |                                           |                                                           |                                    | \$29,250                | 5                                                                     | 50.25                     |
|                          | 2006         | \$33,750                       |                                           |                                                           |                                    | \$33,750                | 6                                                                     | 62.25                     |
|                          | 2007         |                                |                                           |                                                           |                                    |                         | 2                                                                     | 22.00 <sup>3</sup>        |
|                          | <b>TOTAL</b> | <b>\$173,000</b>               |                                           |                                                           |                                    | <b>\$173,000</b>        | <b>40.5</b>                                                           | <b>412.25</b>             |
| CHUBB                    | 2000         | \$71,750                       | 265                                       | \$17,225                                                  | 4,000                              | \$88,975                | 4                                                                     | 37.50                     |
|                          | 2001         | \$75,500                       | 265                                       | \$17,066                                                  | 4,000                              | \$92,566                | 9                                                                     | 93.50                     |
|                          | 2002         | \$119,500                      | 265                                       | \$20,341                                                  | 4,000                              | \$139,841               | 16                                                                    | 162.00                    |
|                          | 2003         | \$90,500                       |                                           |                                                           | 4,000                              | \$95,980                | 8.5                                                                   | 84.75                     |
|                          | 2004         | \$86,251                       | 2,267                                     | \$156,844                                                 | 72,000                             | \$388,960               | 10                                                                    | 102.25                    |
|                          | 2005         | \$58,788                       | 6,451                                     | \$593,045                                                 | 28,000                             | \$657,313               | 9                                                                     | 89.50                     |
|                          | 2006         | \$108,500                      | 6,541                                     | \$407,516                                                 |                                    | \$516,016               | 9                                                                     | 92.75                     |
|                          | 2007         |                                | 11,629                                    | \$708,845                                                 |                                    | \$708,845               | 3.5                                                                   | 36.25 <sup>4</sup>        |
|                          | <b>TOTAL</b> | <b>\$610,789</b>               | <b>27,383</b>                             | <b>\$1,920,882</b>                                        | <b>116,000</b>                     | <b>\$2,931,591</b>      | <b>69</b>                                                             | <b>698.50</b>             |

1. Cash compensation records from documents provided to Ms. Burke by Kaiser and CHUBB Corp.
2. Stock shares and values from registered Form 4 submissions to the SEC. When no value was given on Form 4, opening price of stock on next business day after grant of stock was used to calculate value of shares.
3. Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.
4. 2007 Hours reported were recorded from 1/2007 to 4/2007

SHEILA P. BURKE - OUTSIDE ORGANIZATIONS AND COMPENSATION 2000-2007

| Company                  | Year         | Cash Compensation <sup>1</sup> | Potential Income (Stocks) <sup>2</sup>       |                                                              |                                    | Total Received per Year <sup>3</sup> | Number of Work Days Out of Office for Non-SI Obligations <sup>4</sup> | Total Hours Out of Office |
|--------------------------|--------------|--------------------------------|----------------------------------------------|--------------------------------------------------------------|------------------------------------|--------------------------------------|-----------------------------------------------------------------------|---------------------------|
|                          |              |                                | Stock-Based Compensation<br>Number of Shares | Value<br>(on date of grant, or at opening next business day) | Number of Shares Covered by Option |                                      |                                                                       |                           |
| ABIM Foundation          | 2000         | \$10,000                       |                                              |                                                              |                                    | \$10,000                             | 2.5                                                                   | 26.00                     |
|                          | 2001         | \$11,750                       |                                              |                                                              |                                    | \$11,750                             | 5                                                                     | 58.25                     |
|                          | 2002         | \$14,000                       |                                              |                                                              |                                    | \$14,000                             | 6                                                                     | 61.75                     |
|                          | 2003         | \$13,250                       |                                              |                                                              |                                    | \$13,250                             | 6                                                                     | 63.50                     |
|                          | 2004         | \$14,500                       |                                              |                                                              |                                    | \$14,500                             | 4                                                                     | 42.50                     |
|                          | 2005         | \$7,200                        |                                              |                                                              |                                    | \$7,200                              | 7.5                                                                   | 76.25                     |
|                          | 2006         | \$0                            |                                              |                                                              |                                    | \$0                                  | 2                                                                     | 23.00                     |
| <b>TOTAL</b>             |              | <b>\$70,700</b>                |                                              |                                                              |                                    | <b>\$70,700</b>                      | <b>33</b>                                                             | <b>351.25</b>             |
| Community Health Systems | 2000         | \$0                            |                                              |                                                              |                                    | \$0                                  | 1                                                                     | 11.50                     |
|                          | 2001         | \$0                            |                                              |                                                              |                                    | \$0                                  | 3                                                                     | 26.50                     |
|                          | 2002         | \$0                            |                                              |                                                              |                                    | \$0                                  | 1                                                                     | 10.75                     |
|                          | 2003         | \$10,750                       |                                              |                                                              |                                    | \$10,750                             | 0.5                                                                   | 5.50                      |
|                          | <b>TOTAL</b> |                                | <b>\$10,750</b>                              |                                                              |                                    |                                      | <b>\$10,750</b>                                                       | <b>5.5</b>                |
| Wellpoint, Inc.          | 2000         | \$39,600                       | 3,200 <sup>5</sup>                           | \$54,525 <sup>5</sup>                                        |                                    | \$94,125                             | 4                                                                     | 40.00                     |
|                          | 2001         | \$40,500                       | 1,700                                        | \$183,430                                                    |                                    | \$223,930                            | 8                                                                     | 80.00                     |
|                          | 2002         | \$37,500                       | 17,200 <sup>5</sup>                          | \$315,926 <sup>5</sup>                                       |                                    | \$353,426                            | 8                                                                     | 82.50                     |
|                          | 2003         | \$49,750                       | 3,200 <sup>5</sup>                           | \$110,586 <sup>5</sup>                                       |                                    | \$160,336                            | 8                                                                     | 82.50                     |
|                          | 2004         | \$47,000                       | 1,615                                        | \$127,237                                                    |                                    | \$174,237                            | 12                                                                    | 118.75                    |
|                          | 2005         | \$76,200                       | 1,890                                        | \$254,898                                                    |                                    | \$331,098                            | 10                                                                    | 98.50                     |
|                          | 2006         | \$75,847                       | 3,340                                        | \$243,386                                                    |                                    | \$322,573                            | 7                                                                     | 67.50                     |
| <b>TOTAL</b>             |              | <b>\$366,397</b>               | <b>32,145</b>                                | <b>\$1,539,986</b>                                           |                                    | <b>\$1,909,723</b>                   | <b>59.5</b>                                                           | <b>594.75</b>             |
|                          |              |                                |                                              |                                                              |                                    |                                      |                                                                       | <b>\$5,244,456</b>        |

1. Cash compensation records from documents provided to Ms. Burke by ABIM, CHS and WellPoint.  
2. Stock shares and values from registered Form 4 submissions to the SEC. When no value was given on Form 4, opening price of stock on next business day after grant of stock was used to calculate value of shares.  
3. WellPoint Totals Received per Year do not reflect stock options granted because insufficient information available to break down option grants by year.  
4. Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.  
5. No information on stock-based compensation available from Form 4. Stock-based compensation from documents provided to Ms. Burke by WellPoint.  
6. From options and awards summary provided to Ms. Burke by WellPoint. The total value of Ms. Burke's stock option awards may be understated, in that any options exercised before January 8, 2007 are not reflected in this total.  
7. 2007 Hours reported were recorded from 1/2007 to 4/2007



**SHEILA P. BURKE - OUTSIDE ORGANIZATIONS AND COMPENSATION 2000-2007**

| Company<br>(Other Non Profit)                                                 | Year      | Cash Compensation <sup>1</sup> | Potential Income (Stocks) |                    |                  |                    | Total Received per Year | Number of Work Days Out of Office for Non-SI Obligations <sup>2</sup> | Total Hours Out of Office |
|-------------------------------------------------------------------------------|-----------|--------------------------------|---------------------------|--------------------|------------------|--------------------|-------------------------|-----------------------------------------------------------------------|---------------------------|
|                                                                               |           |                                | Stock Grants              |                    | Stock Options    |                    |                         |                                                                       |                           |
|                                                                               |           |                                | Number of Shares          | Value              | Number of Shares | Value              |                         |                                                                       |                           |
| Marymount University <sup>4</sup>                                             | 1992-2005 | \$0                            |                           |                    |                  |                    | 4                       | 42.50                                                                 |                           |
| University of San Francisco <sup>5</sup>                                      | 1997-2006 | \$0                            |                           |                    |                  |                    | 7                       | 73.75                                                                 |                           |
| Center for HealthCare Strategies <sup>6</sup>                                 | 1998-2004 | \$0                            |                           |                    |                  |                    | 3                       | 26.75                                                                 |                           |
| Kaiser Commission on Medicaid and the Uninsured <sup>7</sup>                  | 2000-2006 | \$0                            |                           |                    |                  |                    | 13                      | 127.5 <sup>3</sup>                                                    |                           |
| Harvard University Kennedy School of Government <sup>8</sup>                  | 2000-2006 | Travel only                    |                           |                    |                  |                    | 94.5                    | 945.00 <sup>3</sup>                                                   |                           |
| Medicare Payment Advisory Committee <sup>9</sup>                              | 2000-2006 | Per Diem                       |                           |                    |                  |                    | 49                      | 488.25 <sup>3</sup>                                                   |                           |
| Potomac School <sup>10</sup>                                                  | 2001-2006 | \$0                            |                           |                    |                  |                    | 13                      | 128.00 <sup>3</sup>                                                   |                           |
| Academy Health <sup>11</sup>                                                  |           | \$0                            |                           |                    |                  |                    | 2                       | 23.00                                                                 |                           |
| Robert Wood Johnson Health Policy Fellowship Advisory Board <sup>12</sup>     | 2002-2006 | \$0                            |                           |                    |                  |                    | 3                       | 31.00 <sup>3</sup>                                                    |                           |
| National Academy of Social Insurance Long Term Care Study Panel <sup>13</sup> | 2003-2005 | \$0                            |                           |                    |                  |                    | 6                       | 57.75                                                                 |                           |
| Georgetown University Public Policy Institute <sup>14</sup>                   | 2004-2006 | \$0                            |                           |                    |                  |                    | 2                       | 19.00                                                                 |                           |
| Institute of Medicine Panel on Drug Safety <sup>15</sup>                      | 2005-2006 | \$0                            |                           |                    |                  |                    | 12                      | 123.75                                                                |                           |
| <b>TOTALS</b>                                                                 |           | <b>\$1,231,636</b>             |                           | <b>\$3,460,868</b> |                  | <b>\$5,644,376</b> | <b>416</b>              | <b>4,197.25</b>                                                       |                           |

1. Cash compensation records from documents provided to Ms. Burke by organizations.  
 2. Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.  
 3. SPB not on Board of organization past 2006, but Total Hours out of office include hours through 4/2007.  
 4. Reporting period 10/2000- 12/2005  
 5. Reporting period 9/2000- 12/2006  
 6. Reporting period 1/2001- 12/2004  
 7. Reporting period 9/2000- 4/2007  
 8. Reporting period 10/2000- 4/2007  
 9. Reporting period 6/2001- 4/2007  
 10. Reporting period 1/2001- 4/2007  
 11. Reporting period 12/01- 12/2006  
 12. Reporting period 12/2000- 4/2007  
 13. Reporting period 1/2001- 12/2005  
 14. Reporting period 1/2002- 12/2006  
 15. Reporting period 9/2000; 6/2005- 12/2006

# EXHIBIT 34



# EXHIBIT 35

June 7, 2007

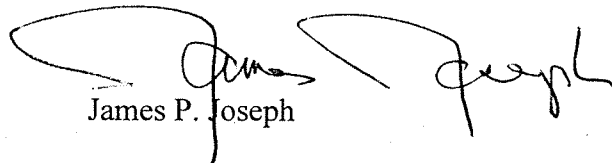
William J. Kilberg, Esq.  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

Re: Independent Review Committee Report

Dear Mr. Kilberg:

Thank you for your letter from earlier today. Please be assured that the Smithsonian Institution Independent Review Committee (the "Committee") has considered and taken into account the points raised in your letters. The Committee is confident that it has presented the information regarding Ms. Burke accurately and fairly. As indicated in Charles Bowsher's letter to you yesterday, the Committee made adjustments to our preliminary calculations after we sent you the draft summary last week, and we have made additional changes in light of your letters.

Sincerely,

  
James P. Joseph

cc: Mark E. Matthews, Esq.

**GIBSON, DUNN & CRUTCHER LLP**  
LAWYERS

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June 7, 2007

**VIA ELECTRONIC MAIL TO COUNSEL AND OVERNIGHT MAIL**

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Fax No.  
(202) 530-9559

Client No.  
C 12393-00001

Charles A. Bowsher  
4503 Boxwood Road  
Bethesda, MD

Re: *Independent Review Committee Report*

Dear Mr. Bowsher:

Thank you for your letter of June 6, 2007, responding to my letter of June 4th to James P. Joseph, of Arnold & Porter LLP, counsel to the Independent Review Committee ("Committee"), of which you are Chairman. In that letter, I set out certain serious concerns regarding what the Committee intended to say in its report to the Smithsonian's Board of Regents about Ms. Sheila P. Burke's outside activities. I was troubled that without putting the matter in proper context, it would be grossly unfair to use Ms. Burke's outside activities as a basis for any change in the current policy that does not prohibit Smithsonian executives from giving speeches to outside groups, serving on the boards of directors of outside organizations, or teaching at academic institutions.

In that regard, I thought it very important that the Committee's report make plain that Ms. Burke accepted employment with the Smithsonian on the express understanding that she could engage in various outside activities, including teaching at Harvard University and serving on Boards of profit and non-profit organizations. I also emphasized that it is essential that the report make clear that Ms. Burke disclosed her outside activities and the compensation she received in her annual Smithsonian financial disclosure statement, and that she was never asked to curtail those activities.

My June 4th letter also questioned the relevance of trying to calculate the time Ms. Burke spent on outside activities. I pointed out that Ms. Burke's value to the Smithsonian was not measured by "billable hours", but whether she carried out her responsibilities effectively. I think it indisputable that Ms. Burke's tenure has, by any reasonable measure, been a success, as recognized when the Regents awarded her the Secretary's Gold Medal for Exceptional Service.

## GIBSON, DUNN & CRUTCHER LLP

Charles A. Bowsher  
June 7, 2007  
Page 2

Finally, I pointed out that, although strongly disagreeing with how the Committee was apparently assessing her tenure through a "Work Days Out" calculation, Ms. Burke believed that the calculation should at least be accurate. In that regard, I noted that the Committee had assigned some 540 hours of outside activity to the Kaiser Commission on Medicaid and the Uninsured, while the Commission's records showed no more than a maximum possible 115 hours. I also pointed out the "Total Work Days Out" calculated included some federal holidays. And I noted that the Committee charts also included time before and after Smithsonian's regular work day.

While your letter advises that the Committee took into account all of the points in my June 4th letter, you only responded to my complaints that the "Work Day Out" calculation overstates the time Ms. Burke spent away from the Smithsonian and is otherwise inaccurate. I hope that your focus on that issue means that the Committee's report will prominently set out that Ms. Burke's outside activities were permitted and fully disclosed, and that no one has suggested that her performance has suffered as a result, that she was unavailable at any time, or that her commitment to the Smithsonian's business was ever less than total.

With respect to my various objections to the "Work Days Out" calculation, your defense of each is not well-taken. First, you maintain that the almost 540 hours of outside activities that the Committee's charts include in its "Work Days Out" calculation includes her service on both the Kaiser Foundation and the Kaiser Commission boards. However, the Committee's charts show that 539.75 hours is counted for her service for the Foundation and then again for the Commission. (I have circled the relevant entries on the attached Commission charts.)

Second, you also state that the Committee excluded weekend and federal holidays from its calculation. Again, that is mistaken. The Committee's chart entitled "SHEILA BURKE – Vacation Time Taken 9/2000-3/2007", includes for 2001 through 2004 the Thanksgiving Day holiday and the following Friday – days on which her office was closed.

Third, although you do not dispute that the Smithsonian's normal work day is from 9:00 a.m. to 5:30 p.m., you defend the 10 hour work day (8:00 a.m. to 6:00 p.m.) that the Committee used as a baseline to calculate "Work Days Out" because Ms. Burke on various occasions started work earlier and worked later. It is, however, quite perverse to stigmatize Ms. Burke as "not working" for the Smithsonian before or after the normal work day when you do not give her any credit for working for the Smithsonian on weekends and during vacations, not to mention before and after the normal Smithsonian work day. Indeed, you include 10 hours for each vacation day in the "Work Days Out" calculation even though Ms. Burke told the Committee during her May 3rd interview that she worked on Smithsonian business for a substantial part of each day she was on vacation.

Finally, although seeming to acknowledge their inaccuracy, you apparently defend the use of Ms. Burke's calendars as the basis of the "Work Days Out" calculation on the ground that

# GIBSON, DUNN & CRUTCHER LLP

Charles A. Bowsher

June 7, 2007

Page 3

the calendars are what the Committee has and that it has attempted to verify the information "whenever possible." But, while we provided third party documentation where possible, even those documents do not reflect actual time, and in most instances such records are not available.

In these circumstances, you cannot truly maintain that the "Work Days Out" calculation that you apparently intend to report to the Regents is accurate. As currently calculated, it overstates the total by at least 62 days -- based solely on the double counting of 540 hours or 54 days with respect to the Kaiser Foundation and Commission, and the eight holiday days that are included in the total. (It would appear that there are other Smithsonian holidays counted as "Work Days Out", see, for example Martin Luther King Day in 2001, as well as double counting of vacation days and Board meetings). What is clear is that, given the nature of the calendars on which the entire enterprise is based, the dimension of the real overstatement is simply not ascertainable. As we have noted from the outset, the calendars are simply a listing of events, some of which occurred and some of which did not. And, some events that did occur are not reflected on the calendars. The calendars are not an accurate accounting of Ms. Burke's time. They certainly should not be used to create any chart that purports to show as a matter of fact the time Ms. Burke did not spend on Smithsonian business.

Reporting to the Regents what may be grossly inaccurate, and certainly is misleading, information regarding Ms. Burke's service to the Smithsonian is hardly consistent with the rigorous fairness that the Committee has pledged itself to follow in presenting its report. It also hardly does credit to the valuable service that Ms. Burke has given the Smithsonian over the last seven years.

To reiterate the key point I made in my June 4th letter, the effort to calculate the time Ms. Burke spent on non-Smithsonian business is a fatally flawed exercise. It says nothing about how she performed her duties, and unfairly subjects Ms. Burke's outside activities to new after-the-fact standards by inaccurate and uneven-handed methods. The Committee should not include the "Work Days Out" calculation in your report to the Regents. If the Committee does, it should at a minimum correct the errors I have identified. In any event, this letter along with my June 4th letter should be included as exhibits to any report to the Regents.

Very truly yours,



William J. Kilberg, P.C.

WJK/rap

Attachments

cc: Sheila P. Burke  
Mark E. Mathews, Esq.  
James P. Joseph, Esq.



To: Drew

From: Diane

June 4, 2007

**RE: KAISER COMMISSION ON MEDICAID AND THE UNINSURED**

I reviewed the Commission meeting agendas and minutes from July 2000 through our last meeting on March 8, 2007, to determine the meeting times and attendees. The records show whether a Commission member was at the meeting, but do not show what portion of the meeting was attended. Therefore, the number of meeting hours shown here is the maximum time (i.e. opening to adjournments) that Sheila Burke could have participated in KCMU meetings. This would substantially overstate Sheila's time spent at Commission meetings as she was only able to participate for a portion of most meetings she attended. If she had been present for the entire meeting, she would have spent a maximum of about 115 hours at KCMU meetings.

| Year | Meeting Date   | Location                                                                                    | Time                                           | Hours of Mtg    |
|------|----------------|---------------------------------------------------------------------------------------------|------------------------------------------------|-----------------|
| 2000 | July 17-18     | Menlo Park                                                                                  | 8-4, 8:30-11:30                                | 11              |
|      | December 7-8   | St Regis, DC                                                                                | 1-5; 9:00-12:15                                | 7 $\frac{1}{4}$ |
| 2001 | April 26-27    | Reagan Bldg, DC<br><i>Evening: Reception/dinner<br/>American Indian Cultural<br/>Center</i> | 12:15-5, 8:15-1:15                             | 9 $\frac{1}{4}$ |
|      | July 12-13     | Four Seasons, DC                                                                            | 1:30-5, 9-12:15                                | 6 $\frac{3}{4}$ |
|      | October 25-26  | National Press Club, DC                                                                     | 1:30-5, 9-12:15                                | 6 $\frac{3}{4}$ |
| 2002 | March 4-5      | St Regis, Washington                                                                        | 1:30-5, 9-12:15                                | 6 $\frac{3}{4}$ |
|      | July 11-12     | National Press Club, DC                                                                     | 1:30-5, 9-12:00                                | 6 $\frac{1}{2}$ |
|      | November 14-15 | Hay Adams, DC                                                                               | 1:00-5; 9-12:30                                | 7 $\frac{1}{2}$ |
| 2003 | April 3-4      | KFF/DC                                                                                      | 12-5:30; 9-12:30                               | 9               |
|      | July 10-11     | KFF/DC                                                                                      | 1-5; 9-12:30                                   | 7 $\frac{1}{2}$ |
|      | November 17-18 | KFF/DC                                                                                      | 1-5; 9-12                                      | 7               |
| 2004 | March 11-12    | KFF/DC                                                                                      | 1-5; 9-12                                      | 7               |
|      | July 15-16     | KFF/DC                                                                                      | 1:15-5; 9-12:15                                | 7               |
|      | November 18-19 | KFF/DC                                                                                      | Sheila did not attend                          |                 |
| 2005 | March 10-11    | KFF/DC                                                                                      | Sheila did not attend                          |                 |
|      | June 22-23     | Menlo Park (with Board)                                                                     | Sheila did not attend<br>KCMU portion          |                 |
|      | November 17-18 | KFF/DC                                                                                      | 1-5:30; 9-12                                   | 7 $\frac{1}{2}$ |
| 2006 | March 9        | KFF/DC                                                                                      | Sheila did not attend                          |                 |
|      | June 15        | KFF/DC                                                                                      | Sheila did not attend                          |                 |
|      | November 2     | KFF/DC                                                                                      | 10:00-5:15<br>(Recall Sheila left at<br>12:00) | 7 $\frac{1}{4}$ |
| 2007 | March 8        | KFF/DC                                                                                      | Sheila did not attend                          |                 |

LMS and SPB- Outside Organizations and Compensation 2000-2006

Sheila P. Burke

| Company                  | Year | Cash Compensation <sup>1</sup> | Potential Income (Stocks) <sup>2</sup> |                                                             | Total Received per Year            | Number of work days out of office for Nons- Obligations <sup>3</sup> | Total Hours out of office |
|--------------------------|------|--------------------------------|----------------------------------------|-------------------------------------------------------------|------------------------------------|----------------------------------------------------------------------|---------------------------|
|                          |      |                                | Stock-Based Compensation               | Stock Options                                               |                                    |                                                                      |                           |
|                          |      |                                | Number of Shares                       | Value (on date of grant or at opening peak of business day) | Number of Shares Covered by Option | Value (as of May 29, 2007)                                           |                           |
| Kaiser Family Foundation | 2000 | \$10,750                       |                                        |                                                             |                                    |                                                                      | 2.5                       |
|                          | 2001 | \$21,250                       |                                        |                                                             | \$10,750                           |                                                                      | 10                        |
|                          | 2002 | \$28,000                       |                                        |                                                             | \$21,250                           |                                                                      | 8                         |
|                          | 2003 | \$28,000                       |                                        |                                                             | \$28,000                           |                                                                      | 9                         |
|                          | 2004 | \$22,000                       |                                        |                                                             | \$28,000                           |                                                                      | 8.5                       |
|                          | 2005 | \$29,250                       |                                        |                                                             | \$22,000                           |                                                                      | 6                         |
|                          | 2006 | \$33,750                       |                                        |                                                             | \$29,250                           |                                                                      | 7                         |
| TOTAL                    |      | \$173,000                      |                                        |                                                             | \$173,000                          |                                                                      | 2.5                       |
| CHUBB Corp.              | 2000 | \$71,750                       | 265                                    | \$17,225                                                    | \$88,975                           | 4,000                                                                | 4                         |
|                          | 2001 | \$75,500                       | 265                                    | \$17,066                                                    | \$92,566                           | 4,000                                                                | 9                         |
|                          | 2002 | \$119,500                      | 265                                    | \$20,341                                                    | \$139,841                          | 4,000                                                                | 16                        |
|                          | 2003 | \$90,500                       |                                        |                                                             | \$95,980                           | 4,000                                                                | 8.5                       |
|                          | 2004 | \$86,251                       | 2,267                                  | \$156,844                                                   | \$632,055                          | 72,000                                                               | 10                        |
|                          | 2005 | \$58,788                       | 6,151                                  | \$593,045                                                   | \$657,313                          | 28,000                                                               | 9                         |
|                          | 2006 | \$108,500                      | 6,541                                  | \$407,516                                                   | \$516,016                          |                                                                      | 9                         |
| TOTAL                    |      | \$610,789                      | 11,629                                 | \$708,845                                                   | \$708,845                          | 116,000                                                              | 3.5                       |
|                          |      |                                | 27,383                                 | \$1,920,882                                                 | \$2,931,591                        | 69                                                                   | 69                        |
|                          |      |                                |                                        |                                                             | \$399,920                          |                                                                      |                           |
|                          |      |                                |                                        |                                                             | \$399,775                          |                                                                      |                           |

1. Cash compensation records from documents provided to Ms. Burke by Kaiser and CHUBB Corp. except where otherwise noted.
2. Stock shares and values from registered Form 4 submissions to the SEC. When no value was given on Form 4, opening price of stock on next business day after grant of stock was used to calculate value of shares.
3. Number of Work Days = Total Hours Worked / 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.
4. 2007 Hours reported were recorded from 1/2007 to 4/2007

LMS and SPB- Outside Organizations and Compensation 2000-2006

| Company                  | Year  | Cash compensation <sup>1</sup> | Potential Income (Stocks) <sup>2</sup> |                                                          |                                    | Total Received per Year | Number of work days "out of office" (for Non-Stock Obligations) | Total Hours "out of office" |
|--------------------------|-------|--------------------------------|----------------------------------------|----------------------------------------------------------|------------------------------------|-------------------------|-----------------------------------------------------------------|-----------------------------|
|                          |       |                                | Number of Shares                       | Value (on date of grant or at opening next business day) | Number of Shares Covered by Option |                         |                                                                 |                             |
| ABIM Foundation          | 2000  | \$10,000                       |                                        |                                                          |                                    |                         |                                                                 |                             |
|                          | 2001  | \$11,750                       |                                        |                                                          | \$10,000                           | 2.5                     | 26.00                                                           |                             |
|                          | 2002  | \$14,000                       |                                        |                                                          | \$11,750                           | 6                       | 58.25                                                           |                             |
|                          | 2003  | \$13,250                       |                                        |                                                          | \$14,000                           | 6                       | 61.75                                                           |                             |
|                          | 2004  | \$14,500                       |                                        |                                                          | \$13,250                           | 6                       | 63.50                                                           |                             |
|                          | 2005  | \$7,200                        |                                        |                                                          | \$14,500                           | 4                       | 42.50                                                           |                             |
|                          | 2006  | \$0                            |                                        |                                                          | \$7,200                            | 7.5                     | 76.25                                                           |                             |
|                          | TOTAL | \$70,700                       |                                        |                                                          | \$70,700                           | 34                      | 351.25                                                          |                             |
| Community Health Systems | 2000  | \$0                            |                                        |                                                          | \$0                                | 1                       | 11.50                                                           |                             |
|                          | 2001  | \$0                            |                                        |                                                          | \$0                                | 3                       | 26.50                                                           |                             |
|                          | 2002  | \$0                            |                                        |                                                          | \$0                                | 1                       | 10.75                                                           |                             |
|                          | 2003  | \$10,750                       |                                        |                                                          | \$10,750                           | 0.5                     | 5.50                                                            |                             |
|                          | TOTAL | \$10,750                       |                                        |                                                          | \$10,750                           | 5.5                     | 54.25                                                           |                             |
| Wellpoint, Inc.          | 2000  | \$39,600                       |                                        |                                                          | \$94,125                           | 4                       | 40.00                                                           |                             |
|                          | 2001  | \$40,500                       | 1,700                                  | \$54,525                                                 | \$223,330                          | 8                       | 80.00                                                           |                             |
|                          | 2002  | \$37,500                       |                                        | \$183,430                                                | \$353,426                          | 8                       | 82.50                                                           |                             |
|                          | 2003  | \$49,750                       |                                        | \$315,926                                                | \$160,336                          | 8                       | 82.50                                                           |                             |
|                          | 2004  | \$47,000                       | 1,615                                  | \$110,586                                                | \$174,237                          | 12                      | 118.75                                                          |                             |
|                          | 2005  | \$76,200                       | 1,890                                  | \$127,237                                                | \$331,098                          | 10                      | 98.50                                                           |                             |
|                          | 2006  | \$75,847                       | 3,340                                  | \$243,386                                                | \$322,573                          | 7                       | 67.50                                                           |                             |
|                          | 2007  |                                |                                        | \$249,998                                                | \$249,998                          | 2.5                     | 25.00 <sup>6</sup>                                              |                             |
|                          | TOTAL | \$366,397                      | 8,545                                  | \$1,539,986                                              | \$1,909,723                        | 59.5                    | 594.75                                                          |                             |
|                          |       |                                |                                        |                                                          | \$5,244,456                        |                         |                                                                 |                             |

- Cash compensation records from documents provided to Ms. Burke by ABIM, CHS and WellPoint, except where otherwise noted.
- Stock shares and values from registered Form 4 submissions to the SEC. When no value was given on Form 4, opening price of stock on next business day after grant of stock was used to calculate value of shares.
- WellPoint Totals Received per Year do not reflect stock options granted because insufficient information available to break down option grants by year.
- Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.
- From options and awards summary provided to Ms. Burke from WellPoint. The total value of Ms. Burke's stock option awards may be understated, in that any options exercised before January 8, 2007 are not reflected in this total.
- 2007 Hours reported were recorded from 1/2007 to 4/2007

LMS and SPB- Outside Organizations and Compensation 2000-2006

| Company<br>(Other Non Profit)                                                 | Year      | Cash compensation  | Potential Income (Stocks) |                    |                     | Total Received per Year | Number of work days out of office | Total Hours out of office |
|-------------------------------------------------------------------------------|-----------|--------------------|---------------------------|--------------------|---------------------|-------------------------|-----------------------------------|---------------------------|
|                                                                               |           |                    | Stock Grants              |                    | Stock Options       |                         |                                   |                           |
|                                                                               |           |                    | Number of Shares          | Value              |                     |                         |                                   |                           |
| Marymount University <sup>4</sup>                                             | 1992-2005 | \$0                |                           |                    | \$0                 | 4                       | 42.50                             |                           |
| University of San Francisco <sup>5</sup>                                      | 1997-2006 | \$0                |                           |                    | \$0                 | 7                       | 73.75                             |                           |
| Center for HealthCare Strategies <sup>6</sup>                                 | 1998-2004 | \$0                |                           |                    | \$0                 | 3                       | 26.75                             |                           |
| Kaiser Commission on Medicaid and the Uninsured <sup>7</sup>                  | 2000-2006 | \$0                |                           |                    | \$0                 | 54                      | 539.75 <sup>3</sup>               |                           |
| Harvard University Kennedy School of Government <sup>8</sup>                  | 2000-2006 | Travel only        |                           |                    |                     | 94.5                    | 945.00 <sup>3</sup>               |                           |
| Medicare Payment Advisory Committee <sup>9</sup>                              | 2000-2006 | Per Diem           |                           |                    | \$?                 | 49                      | 488.25 <sup>3</sup>               |                           |
| Potomac School <sup>10</sup>                                                  | 2001-2006 | \$0                |                           |                    | \$0                 | 13                      | 128.00 <sup>3</sup>               |                           |
| Academy Health <sup>11</sup>                                                  |           | \$0                |                           |                    | \$0                 | 2                       | 23.00                             |                           |
| Robert Wood Johnson Health Policy Fellowship Advisory Board <sup>12</sup>     | 2002-2006 | \$0                |                           |                    | \$0                 | 3                       | 31.00 <sup>3</sup>                |                           |
| National Academy of Social Insurance Long Term Care Study Panel <sup>13</sup> | 2003-2005 | \$0                |                           |                    | \$0                 | 6                       | 57.75                             |                           |
| Georgetown University Public Policy Institute <sup>4</sup>                    | 2004-2006 | \$0                |                           |                    | \$0                 | 2                       | 19.00                             |                           |
| Institute of Medicine Panel on Drug Safety <sup>15</sup>                      | 2005-2006 | \$0                |                           |                    | \$0                 | 12                      | 123.75                            |                           |
| <b>TOTALS</b>                                                                 |           | <b>\$1,231,636</b> | <b>\$3,460,868</b>        | <b>\$5,644,376</b> | <b>\$10,340,220</b> | <b>471</b>              | <b>4,737.00</b>                   |                           |

1. Cash compensation records from documents provided to Ms. Burke by organizations.  
 2. Number of Work Days = Total Hours Worked/ 10 Hours in Work Day. Ms. Burke's calendars report data from 9/2000 forward. For prior 2000 meetings, organization records were used, assuming a 2 hour time commitment per meeting.  
 3. SPB not on Board of organization past 2006, but Total Hours out of office include hours through 4/2007.  
 4. Reporting period 10/2000- 12/2005  
 5. Reporting period 9/2000- 12/2006  
 6. Reporting period 1/2001- 12/2004  
 7. Reporting period 9/2000- 4/2007  
 8. Reporting period 10/2000- 4/2007  
 9. Reporting period 6/2001-4/2007  
 10. Reporting period 1/2001- 4/2007  
 11. Reporting period 12/01- 12/2006  
 12. Reporting period 12/2000- 4/2007  
 13. Reporting period 1/2001- 12/2005  
 14. Reporting period 1/2002- 12/2006  
 15. Reporting period 9/2000- 6/2005- 12/2006

**SHEILA P BURKE- Vacation Time Taken 9/2000-3/2007**

| Vacations/Out of Office                                                                | Total Work Days on Vacation |
|----------------------------------------------------------------------------------------|-----------------------------|
| <b>2000</b>                                                                            |                             |
| 9/1-9/3                                                                                | 1                           |
|                                                                                        | 1                           |
| <b>2001</b>                                                                            |                             |
| 3/19-3/23                                                                              | 5                           |
| 8/13-9/3                                                                               | 16                          |
| 11/20-11/24                                                                            | 4                           |
|                                                                                        | 25                          |
| <b>2002</b>                                                                            |                             |
| 8/9-8/25                                                                               | 11                          |
| 11/26-11/30                                                                            | 4                           |
| 12/23-12/31 out of office                                                              | 6                           |
|                                                                                        | 21                          |
| <b>2003</b>                                                                            |                             |
| 1/1-1/2 out of office                                                                  | 1                           |
| 8/8-9/2 [no calendar entries]                                                          |                             |
| 11/24-11/29                                                                            | 4                           |
| 12/22-12/30                                                                            | 7                           |
|                                                                                        | 12                          |
| <b>2004</b>                                                                            |                             |
| 8/6-8/31                                                                               | 18                          |
| 11/23-11/27                                                                            | 4                           |
| 12/23-12/31 out of office                                                              | 7                           |
|                                                                                        | 29                          |
| <b>2005</b>                                                                            |                             |
| 6/16-6/22                                                                              | 5                           |
| 8/11-8/28                                                                              | 12                          |
| 12/21-12/31 out of office                                                              | 8                           |
|                                                                                        | 25                          |
| <b>2006</b>                                                                            |                             |
| 1/1-1/2 out of office                                                                  | 1                           |
| 3/18-3/23 out of office                                                                | 4                           |
| 6/22-7/4                                                                               | 8                           |
| 8/9-8/27 [calendar entries incomplete- appears to be in [redacted] at least 8/15-8/23] | 7                           |
| 12/23-12/31 out of office                                                              | 4                           |
|                                                                                        | 24                          |
| <b>2007</b>                                                                            |                             |
| 1/1-1/2 out of office                                                                  | 1                           |
|                                                                                        | 1                           |
|                                                                                        |                             |
| <b>TOTAL Work Days on Vacation</b>                                                     | <b>138</b>                  |

|                                                      |            |
|------------------------------------------------------|------------|
| <b>TOTAL Work Days Missed for Non-SI Obligations</b> | <b>471</b> |
|------------------------------------------------------|------------|

**TOTAL WORK DAYS OUT 609**

1. Total Vacation Days, excluding weekends and Federal Holidays

|                                                            |           |
|------------------------------------------------------------|-----------|
| <b>Average Work Days on Vacation per year (2001-2006):</b> | <b>23</b> |
|------------------------------------------------------------|-----------|

**Charles A. Bowsher  
4503 Boxwood Road  
Bethesda, Maryland**

June 6, 2007

William J. Kilberg, Esq.  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

Re: Independent Review Committee Report

Dear Mr. Kilberg:

Thank you for your letter date June 4, 2007 regarding the facts compiled by the Smithsonian Institution Independent Review Committee (the "Committee") on Sheila Burke's non-Smithsonian compensation and time out of the office. In compiling the information regarding Ms. Burke's compensation and time out of the office for non-Smithsonian activities, the Committee took into consideration all of the points raised by you. I will not go through each of the points in your letter, but I did want to respond to three of the issues raised by you.

In your letter, you note that Ms. Burke only spent 112 hours serving on the Kaiser Commission on Medicaid and the Uninsured, and not 549 hours as indicated in the Committee's summary chart. As you know, in addition to the Kaiser Commission, Ms. Burke also served on the board of the Kaiser Family Foundation during these years, receiving \$173,000 for her service on that board and generally attending four, multi-day board meetings a year. The 549 hours included in the Committee's chart is for both the Kaiser Foundation and the Commission. (Attached is a summary of Ms. Burke's service on the Kaiser Family Foundation's board provided by the Smithsonian to Senator Grassley, which we used in preparing our summary.)

You state in your letter that the Committee included holidays and weekends in its total calculations. This is incorrect. The Committee excluded weekends and federal holidays from the total time out of the office on non-Smithsonian business and vacation, which, for Ms. Burke, was over four weeks a year.

For meetings and phone calls that lasted one or two hours, the Committee counted the actual hours listed in Ms. Burke's calendar. In addition, recognizing that Ms. Burke does not work from 9:00 to 5:30, the Committee determined, from the calendars provided

William J. Kilberg, Esq.  
June 6, 2007  
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to us, that Ms. Burke generally is in the office from 8:00 to 6:00 on a normal work day. Any meetings that are outside of this time period were not included in the total hours out of office. In calculating the total number of days out of the office, we assumed that Ms. Burke worked 10 hours a day and divided Ms. Burke's total number of hours out of the office by 10 to arrive at the over 400 work days out of the office reflected in the Committee's summary chart.

Finally, you state in your letter that Ms. Burke's calendars are not accurate reflections of her time. The Committee attempted to verify the information in Ms. Burke's calendar, whenever possible. For example, in calculating time out of the office for corporate board service, the Committee relied on summaries of meetings received by Ms. Burke and used by the corporations in calculating the fees she received for each meeting attended.

The Committee has continued to review the materials provided by Ms. Burke and the Smithsonian, and we have made some adjustments to our calculations, reducing slightly Ms. Burke's number of days out of the office. The Committee believes that the information included in our final report to the Board of Regents is accurate.

If you have additional information for the Committee to assist it in estimating Ms. Burke's time out of the office, we will consider it and update our charts, if appropriate.

Sincerely,

A handwritten signature in black ink that reads "Charles A. Bowsher". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Charles A. Bowsher

cc: Mark E. Matthews, Esq.

**Sheila Burke**  
**Board Service and Compensation Summary: 2000 - 2006**  
**Kaiser Family Foundation**

|      | KFF Board Meeting 1  | KFF Board Meeting 2      | KFF Board Meeting 3   | KFF Board Meeting 4   | KCMU**<br>Honorarium | TOTAL    |
|------|----------------------|--------------------------|-----------------------|-----------------------|----------------------|----------|
| 2000 | -                    | -                        | Sept 7-8<br>\$5,125   | Dec 14-15<br>\$5,125  | \$500                | \$10,750 |
| 2001 | Mar 23-24<br>\$5,125 | June 14-15<br>\$5,125    | Sept 13-14<br>\$7,000 | Dec 13-14*<br>\$4,000 | -                    | \$21,250 |
| 2002 | Mar 15-16<br>\$7,000 | June 13-14<br>\$7,000    | Sept 17<br>\$7,000    | Dec 13-14<br>\$7,000  | -                    | \$28,000 |
| 2003 | Mar 27-28<br>\$7,000 | June 12-13<br>\$7,000    | Sept 25-26<br>\$7,000 | Dec 18-19<br>\$7,000  | -                    | \$28,000 |
| 2004 | Apr 1-2*<br>\$4,000  | July 4-10<br>\$7,000     | Sept 29-30<br>\$7,000 | Dec 7-8*<br>\$4,000   | -                    | \$22,000 |
| 2005 | Mar 24-25<br>\$7,000 | June 23-24<br>\$7,000    | Sept 15-16<br>\$7,000 | Dec 1-2<br>\$8,250    | -                    | \$29,250 |
| 2006 | Mar 23-24<br>\$8,250 | May 31-June 1<br>\$8,250 | Sept 15-16<br>\$8,625 | Nov 16-17<br>\$8,625  | -                    | \$33,750 |

Grand Total    \$173,000

\* did not attend this meeting (receives Board retainer but not meeting stipend)

\*\* Kaiser Commission on Medicaid and the Uninsured

Notes

1. Began serving on KFF Board in September of 2000
2. Began serving as Chair of the Trustee Selection Committee in September of 2001
3. Began serving as Chair of the Board in December of 2005



# GIBSON, DUNN & CRUTCHER LLP

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June 4, 2007

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### Via Email and Messenger Delivery

James P. Joseph, Esq.  
Arnold & Porter LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004

Re: *Independent Review Committee Report*

Dear Mr. Joseph:

The Board of Regents of the Smithsonian Institution has empanelled an Independent Review Commission, comprised of Charles A. Bower, Stephen D. Potts, and A.W. "Pete" Smith, Jr., to review various governance matters, including the outside activities of senior executives of the Smithsonian. In that regard, Ms. Sheila P. Burke, Deputy Secretary of the Smithsonian, voluntarily provided the Committee with the calendars she maintained since joining the Smithsonian in July 2000, as well as information about the compensation she received from her service as a member of the boards of directors of various profit corporations and non-profit organizations. Ms. Burke also met with the Committee on May 3, 2007 for approximately two hours to discuss those and other matters. She has cooperated fully with the Committee and has responded to every question and request made by the Committee. Subsequently, at the Committee's invitation she provided additional comments as to how to make Smithsonian operations more transparent

You have since advised me that the Committee's report to the Regents may contain a discussion of Ms. Burke's outside activities and may include as attachments various charts that purport to capture and summarize the time Ms. Burke spent on outside activities as well as the compensation she received.

As I stated when you first mentioned that possibility, doing so without putting matters in their proper context would be extremely unfair to Ms. Burke as it would not provide an accurate

# GIBSON, DUNN & CRUTCHER LLP

James P. Joseph, Esq.

June 4, 2007

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representation of her Smithsonian work and her accomplishments on behalf of the Institution. Consequently, it is very important that the Committee's report take care to note prominently that Ms. Burke accepted employment with the Smithsonian on the express understanding that she could engage in various outside activities, including teaching at Harvard University and serving on the Boards of profit and non-profit organizations.

The report should also make clear that Ms. Burke disclosed her activities and the compensation she received from those outside activities in her annual Smithsonian financial disclosure statement. And in discussing Ms. Burke's outside activities, the Report should note that the majority of those activities were with governmental, academic or non-profit research organizations, whose missions complement that of the Smithsonian – "the increase and diffusion of knowledge."

Putting aside for the moment that your "Work Days Out" charts grossly overstate the time Ms. Burke spent "away from work" for the Smithsonian, it is an entirely misbegotten proposition that "Work Days Out" is a relevant or material metric of Ms. Burke's contribution to the Smithsonian. Ms. Burke was not retained to work on an hourly basis and, unlike, for example, in a law firm, her value to the Smithsonian is not measured in billable hours. Rather, the test is whether her efforts have put the Smithsonian's operations she was responsible for on a more efficient and professional basis. By any reasonable measure, Ms. Burke's tenure has been an unqualified success.

During her tenure Ms. Burke has overseen the efforts to modernize the financial reporting systems of the Institution; entirely reorganized the operation of the Human Resources department; and oversaw the management of upgrading the Institution's information technology systems. She was responsible for establishing the Institution wide factual and reputational review of the new Smithsonian on Demand activities. She oversaw the successful \$254m construction of the Steven Udvar-Hazy Center, the \$219m National Museum of the American Indian on the Mall and the \$225m restoration of the Patent Office Building, now known as the Donald W. Reynolds Center for Art and Portraiture as well as its soon to be completed domed courtyard. During her 7 year tenure she was promoted from Under to Deputy Secretary, recognized by the Regents in 2005 for her work and awarded the Secretary's Gold Medal for exceptional service. Any discussions with her colleagues would evidence her commitment to the Institution, her strong work ethic, her full and constant engagement with the business of the Smithsonian, and above all her ability to produce results.

Indeed, until now no one raised any question about Ms. Burke's approved outside activities or the compensation she received in that regard. Nor did anyone suggest that she should curtail those activities. As she discussed at length with the Committee, Ms. Burke has always been available to deal with Smithsonian business no matter where she was, and no matter whether it was before or after the normal work day or whether she was on vacation. Ms. Burke is and has been a hard working senior executive, dedicated to improving the Smithsonian, and

# GIBSON, DUNN & CRUTCHER LLP

James P. Joseph, Esq.  
June 4, 2007  
Page 3

effective in doing so. If the Regents deem it appropriate to change the policy going forward with respect to outside activities of senior executives, that is certainly their right. It is, however, grossly unfair to shine an after-the-fact spotlight on Ms. Burke's outside activities, presumably to hold her conduct out as the basis for any change in the current policy.

Compounding that injustice is how you have calculated the time Ms. Burke purportedly spent on non-Smithsonian business. As best as we can determine, you did so based upon the calendars that Ms. Burke provided the Committee. However, as I emphasized in the transmittal letters, the calendars are not an accurate reflection of her Smithsonian work or her outside activities. As I explained, the calendars list many outside events that, in fact, never occurred, or in which Ms. Burke did not participate (for example, the weekly Institute of Medicine conference calls), and do not include Smithsonian activities that did, in fact, occur. I also pointed out that no effort was made after the fact to harmonize the calendars with what actually happened. As a result, your charts grossly overstate the time Ms. Burke spent on outside activities and grossly understate the time and effort Ms. Burke devoted to Smithsonian business. For example, you have calculated the time over the seven year period she spent on the non-profit Kaiser Commission on Medicaid and the Uninsured to be 549 hours. That organization's records indicate that her time spent over that period could have been no more than 112 hours, and may well be less as their records do not reflect whether or not she attend the entirety of the meeting or just a portion of it.

As Ms. Burke explained to the Committee, she viewed her work at the Smithsonian to be a twenty-four hour, seven day a week job. She explained she routinely tended to Smithsonian business when on vacation, on weekends, in the evenings and even when away from the office attending outside meetings. She was constantly on her cell-phone and on her blackberry dealing with matters involving the Smithsonian and was available to her co-workers at all times. She said just that during her meeting with the Committee, and there followed an extensive discussion on this point with the Committee members. Yet, your charts fail to acknowledge this or to give her any credit for the hours she spent on Smithsonian business before or after the workday, on weekends, on vacation or when away from the office.

Also, your charts frequently bundle up one or two hour conference calls or meetings and mistakenly count them as full days for the purpose of the "Total Work Days Out" calculation, that again badly overstates the matter. If, for example, Ms. Burke spent an hour on the phone dealing with issues pertaining to organizations on whose boards she served, she simply worked an hour or two longer for the Smithsonian if that was necessary to address Smithsonian business. In numerous cases the charts also fail to credit activities clearly indicated on the calendar as Smithsonian events on days that were counted as "Work Days Out." Your charts also mistakenly count as "Work Days Out" Smithsonian holidays such as Thanksgiving Day and Martin Luther King Day. It is hard to understand how such obvious inaccuracies could escape the Committee's review.

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James P. Joseph, Esq.

June 4, 2007

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Additionally, including vacation days in that calculation simply serves to inflate the total for no apparent purpose other than to inflate the total number of days that Ms. Burke allegedly did not do work for the Smithsonian. Not only does it ignore the work that Ms. Burke did for the Smithsonian while on vacation, the charts confuse the real issue here because they say nothing about whether Ms. Burke did her job effectively, which is, of course, the true measure of an executive's performance. The implication is that being away from the office means that no work is being done. Under that approach, Supreme Court Justices do not conduct any Court business for some 90 days a year – as the Court's term begins in the first Monday in October and generally concludes at the end of June. I'm sure that Justice Stevens would be surprised to learn that in his thirty-five years on the Court he missed some 3,150 days – or more and eight and one-half years – of work.

Furthermore, it appears that you have included in your "Work Days Out" calculation non-Smithsonian activities that occurred before or after the regular Smithsonian work day. While Ms. Burke believes that totaling hours or "Work Days Out" is not how her performance should be measured, if the report to the Regents contains that sort of an analysis, then it should be accurate. The traditional Smithsonian work day begins at 9 a.m. and ends at 5:30 p.m., with one-half hour for lunch. This is an eight and one-half hour day, not the ten hour day you have apparently used as a baseline. As a result, your charts include time on outside activities that started before the official work day began, and also time after the work day ended. For example, meetings of the Potomac School Finance Committee were held in Ms. Burke's office and usually started at 8 a.m., and Ms. Burke left these meetings promptly at 9 a.m. to attend regularly scheduled Smithsonian staff meetings. Your charts also appear to count Potomac School activities that occurred after the end of the business day. There are other numerous instances where the "Work Days Out" calculation also includes time before and after the regular Smithsonian work day. If you are not going to give Ms. Burke credit for the time she spent on Smithsonian business outside the normal work day, then time she spent on non-Smithsonian business before or after the regular work day ended should not be charged to some "Work Days Out" account.

\* \* \*

In summary, the Committee's effort to calculate the time that Ms. Burke spent on non-Smithsonian business is a fundamentally flawed exercise. It is not an accurate reflection of her performance. It unfairly subjects Ms. Burke's outside activities to new after-the-fact standards, and does so by inaccurate and uneven handed methods. In these circumstances, I believe that the charts should not be included in the Committee's report as they do not in their present form reflect the facts. If you do decide to include the charts, this letter should be included as an exhibit to any report the Committee makes to the Regents in order to provide the accurate and appropriate context.

GIBSON, DUNN & CRUTCHER LLP

James P. Joseph, Esq.  
June 4, 2007  
Page 5

Ms. Burke believes that it is a privilege to work at the Smithsonian. Having spent the majority of her professional career as a public servant, she recognizes the responsibilities borne by those who work in the government or in the non-profit sector. She fully acknowledged at all times her outside activities, the majority of which were uncompensated and for academic, governmental or non-profit entities. At no time did any of her activities create a conflict of interest. Other than her family, her responsibilities at the Smithsonian have been and continue to be her first priority.

We appreciate the opportunity to review and provide these comments to the material you sent us. In the interest of assuring fairness and accuracy, we expect that Ms. Burke will be given a similar opportunity to review any other issues and/or material pertaining to her that the Committee might decide to include in its report to the Regents. Having received neither such materials nor any such indication from you, we presume there will be no other such issues specific to Ms. Burke in the report.

Very truly yours,



William J. Kilberg

PB/slc

cc: Sheila P. Burke  
Mark E. Matthews, Esq.

100235340\_1.DOC

# EXHIBIT 36



Smithsonian Institution

Memo

Office of the Secretary

Date November 9, 2006  
To Sprightley Ryan  
From Jim Hobbins  
Subject The Secretary's "Blanket" Travel Authorization

We have found the accompanying copy of the Secretary's blanket travel authorization for fiscal year 2001. We haven't located one for fiscal year 2000, but we recall distinctly that it was essentially identical to this one.

I should add that we abandoned this practice of using a blanket authorization when we switched to Travel Manager in October 2001, since each trip was authorized individually as part of that system.

Please let me know if you need any additional information.

With thanks and best wishes,

A handwritten signature in black ink, appearing to be the initials 'JH' in a stylized, cursive script.

Smithsonian Institution Building Room 215  
1000 Jefferson Drive SW  
Washington DC 20560-0016  
202.633.1869 Telephone  
202.786.2515 Fax

IRC12699

SMITHSONIAN INSTITUTION  
 AUTHORIZATION OF OFFICIAL TRAVEL  
 (NOTE: See Notice on Reverse)

0164TU00001  
 COMPTROLLERS' OFFICE USE ONLY  
 No. \_\_\_\_\_ Date 10/04/00

1.  Amends TA No.  Cancels TA No.

2 TRAVELER (first name, middle initial, last name) Laurence M. Small 3 TITLE Secretary 4 SOCIAL SECURITY NO. \_\_\_\_\_

5 ADDRESS SIB 205, MRC 016  
 Washington, D.C. 20560 6 OFFICE/BUREAU Office of the Secretary 7 OFFICE PHONE NO. (202) 357-1846

8 SMITHSONIAN CONTACT (name, office, bldg., rm., phone no.) Leslie Davis, 357-1846 9 OFFICIAL DUTY STATION (city, state) Washington, D.C. 10 HOME PHONE NO. \_\_\_\_\_

11 APPROXIMATE DATES OF TRAVEL  
 Begin about: 10/01/00 End about: 9/30/01

12 SPECIFIC TRAVEL PURPOSE  
To conduct official business on behalf of the Smithsonian Institution.

13 STATUS OF TRAVELER  Employee  Other (Identify) \_\_\_\_\_  
 a Document establishing status \_\_\_\_\_ Date: \_\_\_\_\_  
 b Office in which document is filed \_\_\_\_\_

14 STATE DEPT ACCREDITATION  Yes  No

15 ENCLOSURES  
 SF-1038 advance, copies 1-2-3  
 SI-1435 OHR approved training request (copy 7)  
 Other, explain at No. 26

16 TRAVELER is (check one)  
 a Gov't Charge Card Holder  
 b Gov't Charge Card Declinee  
 c Not Applicable

17. SPECIAL AUTHORIZATION  
 Annual Leave for \_\_\_\_\_ days  
 Other, enter at No. 26

18. AUTHORIZED OFFICIAL ITINERARY (NOTE: DO NOT INCLUDE ANY PERSONAL STOPS)

| Date (f) | ITINERARY POINTS (d) | DOMESTIC PER DIEM RATE |                |                   | FOREIGN PER DIEM RATE (h) | ACTUAL EXPENSE RATE (g) | DAYS AT THIS RATE (n) | MODE OF TRANS. BETWEEN ITINERARY POINTS (i) |
|----------|----------------------|------------------------|----------------|-------------------|---------------------------|-------------------------|-----------------------|---------------------------------------------|
|          |                      | MAXIMUM LODGING (e)    | M & H RATE (d) | TOTAL MAXIMUM (e) |                           |                         |                       |                                             |
| 10/01/00 | FROM: various        |                        |                |                   |                           |                         |                       | AIR/RAIL                                    |
| 10/30/00 | TO: various          |                        |                |                   |                           |                         |                       | AIR/RAIL                                    |
|          | TO: _____            |                        |                |                   |                           |                         |                       |                                             |
|          | TO: _____            |                        |                |                   |                           |                         |                       |                                             |

19. IS THE TRAVELER MAKING ANY DEVIATIONS FROM THE AUTHORIZED ITINERARY FOR PERSONAL CONVENIENCE, TAKING ANY ANNUAL LEAVE OR USING A DIFFERENT MODE OF TRANSPORTATION FOR PERSONAL CONVENIENCE? (If "YES" explain in item 26 "REMARKS")  
 YES  NO

20 IS AIR FARE IN EXCESS OF THE LOWEST CONTRACT CARRIER FARE? (If "YES", submit form SA-3522 to ISO)  
 YES  NO

21. IS EXTRA FARE: AIR (first class, business class, etc.) OR RAIL (Metrolink, pullman, etc.) AUTHORIZED? (If "YES", justify in item 26)  
 YES  NO

22A. WILL POV BE USED FOR ANY TRAVEL BETWEEN ITINERARY POINTS? (If "YES", check one box below and complete item 22B)  
 USE OF POV IS ADVANTAGEOUS TO THE SMITHSONIAN  
 USE OF POV HAS BEEN DETERMINED TO BE FOR PERSONAL CONVENIENCE AND REIMBURSEMENT LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER

22B MILEAGE RATE PER MILE \_\_\_\_\_

23 IS ACTUAL EXPENSE UNUSUAL CIRCUMSTANCES REQUESTED? (If "YES" justify in item 26 and include or attach written approval of Management Committee Member)  
 YES  NO

24 IS COMMERCIAL CAR RENTAL AUTHORIZED? (If "YES" include estimated cost in 26c)  
 YES  NO

25 MISCELLANEOUS  
 Mileage @ \_\_\_\_\_ a mile for approx \_\_\_\_\_ miles  
 Supplies, services, equipment \$ \_\_\_\_\_  
 Public transportation, taxis \$ \_\_\_\_\_  
 Excess baggage, justify at No. 26 \$ \_\_\_\_\_  
 Registration Fee \$ \_\_\_\_\_  
 Relocation; attach OHR approved SI-3010  
 Other, identify at No. 26 \$ \_\_\_\_\_

26 REMARKS (Cite # to which remarks refer) If FCP travel, show kind of excess currency to be used  
OK to walk through Joyce M. McHenry Unlimited blanket. 10/04/08

23. Actual lodging expenses are requested when necessary.  
 ACK 401 1100 4001 6100 2111 See below # 29  
 James M. Hobbins, Exec. Asst.

27. ESTIMATED COST (Round to the nearest dollar)

|                  |                         |                 |              |
|------------------|-------------------------|-----------------|--------------|
| A TRANSPORTATION | B. PER DIEM/SUBSISTENCE | C MISCELLANEOUS | D TOTAL      |
| \$ 10,000.00     | \$ 10,000.00            | \$ 10,000.00    | \$ 30,000.00 |

28 TRAVELER'S SIGNATURE Laurence M. Small, Secretary DATE SIGNED 10-3-00

29 TRAVELER'S SUPERVISOR (Type name, title) James M. Hobbins, Exec. Asst. to the Sec SIGNATURE \_\_\_\_\_ DATE SIGNED 10-3-00

APPROVING OFFICIAL (Type name, title) Leslie Davis, Asst. to the Sec. SIGNATURE \_\_\_\_\_ DATE SIGNED 10-3-00

31. TRAVELER'S SURNAME (Type) SMALL FUND see above PROGRAM 210 OBJ CL 0164TU00001 COMPTROLLERS' OFFICE USE ONLY

Accounting Data SMALL see above: 210 IA NO 0164TU00001 AMOUNT 30,000.00 SURNAME McHenry



# EXHIBIT 37



KPMG LLP  
2001 M Street, NW  
Washington, DC 20036

February 20, 2007

The Audit and Review Committee of the Board of Regents  
and the Inspector General  
Smithsonian Institution  
1000 Jefferson Drive SW  
Washington, DC 20560-0017

Dear Committee Members and Inspector General:

We have audited the financial statements of the Smithsonian Institution (Smithsonian) as of and for the year ended September 30, 2006 and have issued our report thereon dated February 20, 2007. In planning and performing our audit of the financial statements, we considered internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. An audit does not include examining the effectiveness of internal control and does not provide assurance on internal control.

However, we noted certain matters involving internal control and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions are matters coming to our attention that, in our judgment, relate to significant deficiencies in the design or operation of internal control and could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Our consideration of internal control would not necessarily disclose all matters in internal control that might be reportable conditions.

The reportable conditions noted during our audit, which have been discussed with the appropriate members of management, relate to the accounting resources and staff capacity and the valuation of "alternative" investments and are presented in the attached Exhibit. Although not considered to be reportable conditions, we also noted other matters in the course of our audit which we would like to bring to your attention. These matters are also presented in the attached Exhibit.

A material weakness is a reportable condition in which the design or operation of one or more internal control components does not reduce to a relatively low level the risk that errors or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of internal control would not necessarily disclose all matters in internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above. However, we do not consider the reportable conditions described above to be material weaknesses.

The matters presented in the Exhibit were considered in determining the nature, timing, and extent of the audit tests applied in our audit of the 2006 financial statements, and this report does not affect our report on these financial statements dated February 20, 2007. We have not considered internal control since the date of our report.



This report is intended solely for the information and use of the Board of Regents, management and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

\* \* \* \* \*

It was a pleasure to work with the management and employees of the Smithsonian. We sincerely appreciate the courtesies and assistance extended to our team in the course of our work.

Very truly yours,

**KPMG LLP**

cc: Mr. Cristián Samper, Acting Secretary  
Ms. Alice C. Maroni, Chief Financial Officer  
Mr. Andrew J. Zino, Comptroller

**KPMG Recommendations Arising from the September 30, 2006 Audit**

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***Accounting Resources and Staff Capacity – Reportable Condition***

We noted that the accounting personnel resources of the Office of the Comptroller (OC) and Smithsonian Business Ventures (SBV) were stretched thin during fiscal year 2006. We understand that the staffing situation reflects continuing budget constraints, but believe that there are a number of other contributing factors, including the increasing complexity of the applicable accounting pronouncements, additional federal reporting requirements, inquiries from external regulators, including Congress and the GAO, continuing system implementations and other special projects, and high turnover of employees (including two recent high-level vacancies at SBV).

We recommend that the CFO and other appropriate members of the Smithsonian's financial management team reevaluate the accounting resource needs and staff capacity in OC and SBV during fiscal year 2007, and consider adding qualified individuals to the accounting staff in order to ensure that (1) greater supervisory depth is in place (e.g., an assistant or deputy comptroller) and (2) that staff capacity is adequate to meet the organization's requirements.

**Management's Response:**

Smithsonian recognizes the need for qualified supervisory and other accounting and financial personnel within SBV and OC to meet the continuing growth in requirements for accurate and reliable financial information. Competition to recruit qualified accounting personnel in the greater Washington area has been intense in the past few years, and attracting individuals to the Smithsonian, despite its worldwide recognition, has been difficult. Recruiting accounting personnel has been a top priority of the CFO in recent years who is personally involved in the hiring of senior finance personnel across the Smithsonian, as well as for OC and SBV positions. The CFO is committed to hiring a Deputy Comptroller and at least two additional audit staff within OC in the current year. In addition, the CFO plans to hire six additional personnel in the upcoming years (2 in OC and 4 in critical areas outside of OC that prepare and feed financial information to OC) to support the Smithsonian's financial operations and the financial statement audit. Likewise SBV has already started to rebuild its financial staff. Plans are also in place to continue the upgrade and recruitment of additional SBV accounting staff to further enhance the financial operations of this organization.

***Valuation of Alternative Investments – Reportable Condition***

Alternative investments are defined by the AICPA as investments not listed on national exchanges, over the counter markets, or for which quoted market prices are not available from sources such as financial publications, the exchange, or NASDAQ. Alternative investments include hedge funds, private equity funds, real estate funds, commodity funds, funds of funds, as well as commingled funds. Alternative investments continue to draw increased focus regarding how organizations obtain sufficient support for the existence and valuation of those investments. These challenges arise due to the lack of a readily determinable fair value for these investments and sometimes limited information provided by fund managers, including a lack of visibility into the underlying investments. The Smithsonian's position in alternative investments, as defined by the AICPA, at September 30, 2006, was approximately \$580.8 million (approximately 62% of the fair value of the investment portfolio), including \$181.8 million in hedge funds, \$394.6 million in non-publicly traded commingled and index funds, and \$4.4 million in private equity and venture capital funds. Most of the hedge fund investments were made in 2006.

**KPMG Recommendations Arising from the September 30, 2006 Audit**

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During 2006 and 2005, the AICPA issued extensive guidance on the expectations of both management and auditors regarding audit evidence over the valuation of alternative investments. As a result of the growth in the Smithsonian's alternative investment portfolio and the need to comply with the AICPA guidance, we recommend the Smithsonian develop a comprehensive process to monitor the valuation of its alternative investments which includes the procedures and controls summarized below:

- Management should determine and document how the estimated fair value of each investment is determined.
- For those investments where the underlying investment information can be obtained, we recommend that management obtain the detail from the fund managers at the balance sheet date and perform procedures to evaluate the reasonableness of the valuations. In cases where the underlying investments are readily marketable securities, price testing should be performed (i.e., recalculate value using an independent pricing service such as Bloomberg) to verify the values provided by the fund managers.
- For those investments where underlying detail is not available, we recommend that management communicate with the fund managers as necessary (e.g., via conference calls, site visits, etc.) to perform ongoing monitoring. The agendas for these communications should be formally documented along with the level of visibility into the underlying securities that was obtained and any valuation procedures performed.
- We recommend that management obtain the audited financial statements for all of the investments and review them to determine the type of audit opinion and confirm the basis for reporting fair value. An analysis should be prepared and documented to compare the audited fair value (at the share level) to the reported fair value at the financial statement date and identify and explain the reasons for any differences.
- For tracking purposes, we recommend that management maintain a rollforward analysis for each investment to track cost basis and fair value. The rollforward analysis should include information such as beginning/ initial cost basis, additional follow-on investments/ contributions and/or redemptions/distributions during the year, share/ series class, changes in valuation, and ending fair value. This information will be helpful in understanding the nature and components of the changes in the cost and fair value of each investment from year to year.

As part of the Smithsonian's investment valuation process, a quarterly report is prepared for review by the Smithsonian Investment Committee, which contains information on the investments including performance results. This information is helpful in understanding the process in place over the valuation of the investments. We recommend that the fourth quarter report be enhanced to include a direct link to the Smithsonian's actual return on each of the investments for the fiscal year and a discussion on any deviation between Smithsonian's return and the investee funds' actual returns. The fourth quarter report should include a discussion of any benchmarks used to measure performance of the investments and rationale as to why the chosen benchmarks are considered appropriate for the respective investments. The report should also include a discussion on how management determined the valuations of the investments were reasonable. Finally, the fourth quarter report should be prepared prior to the start of the audit so that it serves as a basis for management's assertion over the valuation of these investments.

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**KPMG Recommendations Arising from the September 30, 2006 Audit**

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Management's Response:

In March 2006 shortly after the Smithsonian started investing in hedge-funds and private equity, management met with KPMG to discuss the design and implementation of control procedures for these investments. Based on these discussions, the Institution put in place new procedures. These were reviewed again with KPMG in July and were further refined. While we agree with the recommendations that these procedures should be further strengthened and better documented, we find questionable KPMG's classification of commingled and indexed funds (42% of the fair value of the investment portfolio) as alternative investments.

Specifically, we are taking the following actions:

- We will further define, develop and document the Endowment's investment policies, processes and procedures that will guide our initial due diligence, ongoing monitoring and financial reporting.
- We will continue to do quarterly reports for the Smithsonian Investment Committee. The report for the fourth quarter will be further enhanced to include an expanded discussion of manager performance against the selected benchmarks and deviations of Smithsonian performance from that of the overall fund. Every effort will be made to complete this fourth quarter report before the start of the audit.
- We will formalize our current practice of obtaining and reviewing the audited financial statements for all the funds in which we are invested. This review will include a confirmation of the basis for valuation used by the manager and a comparison of the reported fair value of the Smithsonian investment to that in the audited statement.
- We will strengthen the policies and procedures for the monitoring of the valuation of investments in non-publicly traded funds as follows:
  - For index funds we will continue to track fund performance against the appropriate index and investigate and document any large deviations from the index.
  - For other funds where information on the underlying investments is available, we will strengthen and document procedures for independent valuation of the underlying investments and a comparison to those provided by the manager.
  - For investments where information on underlying investments is not available we will strengthen and formalize documentation of our current process for communication (i.e. conference calls, site visits, analysis of quarterly reports, etc.) with fund managers and analysis of other data obtained from the managers to perform ongoing monitoring. We will also institute the recommended "roll forward" analysis to track the cost and fair value basis for our investments.

**KPMG Recommendations Arising from the September 30, 2006 Audit**

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***Documentation of Accounting Policies and Procedures***

As the Smithsonian's operations have grown and evolved over time, they have become more varied and complex. The applicable accounting and financial reporting requirements have also increased significantly in their complexity, but the Smithsonian's practices for documenting its accounting policies and procedures have remained informal.

We believe that the Smithsonian would benefit from a more formal approach to documenting its accounting policies, positions and procedures, especially in dealing with personnel turnover and understanding the basis for past decisions that continue to have significant effects on the accounting and external reporting processes. We noted Smithsonian would specifically benefit from enhanced documentation in areas such as conclusions over treatment of complex contribution arrangements such as Lockheed Martin, the methodology for allocation of facilities costs, and the accounting treatment for non-consolidated affiliates such as Friends of the National Zoo. In addition we believe that the Smithsonian should apply the same rigor in documenting significant current year accounting matters, such as the lease accounting for the Victor Building and the adoption of FASB Interpretation 47 related to conditional asset retirement obligations.

Accordingly, we recommend that the Smithsonian develop a plan and timetable for compiling and maintaining an accounting policies and procedures manual in 2007. Such a manual should provide information about the selection and application of all significant accounting policies, a discussion of alternatives considered, conclusions reached and authoritative literature consulted, and guidance on related procedures and controls. In addition, it is crucial for the Smithsonian to view certain policies, such as cost allocation policies and allowances for uncollectible receivables, as living documents that will need to be revisited periodically to ensure current facts remain supportive of past policies. We believe that this information would provide a valuable reference source for accounting and management personnel and an effective training tool for new employees or employees who change responsibilities.

**Management's Response:**

Smithsonian supports the concept of documenting significant accounting policies, procedures, and positions and currently performs these functions informally. The initial compilation and maintenance of a formal accounting policies and procedures manual is a costly and labor intensive process. Funding and staffing limitations will limit our ability to develop and finalize this manual in the near term. Smithsonian however, will develop a plan and timetable for creating an accounting policy manual.

***Financial Statement Preparation***

Preparation of the Smithsonian's year-end financial statements requires significant disaggregation and analysis of balances in the PeopleSoft general ledger in order to derive the information needed for the financial statements. In addition, certain accounts, such as restricted contributions and net assets, are not accurately classified in the PeopleSoft system. As a result, the Smithsonian relies on external spreadsheets as the supporting records to properly present these items in the financial statements.

The use of manual spreadsheets to track and develop critical financial statement balances causes an unnecessary level of risk of reporting errors. In addition, the supplemental analysis and reporting required outside the basic general ledger system creates unnecessary staff hours that could be directed to other priorities if the system capabilities were more fully utilized.

**KPMG Recommendations Arising from the September 30, 2006 Audit**

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In order to minimize the risk of errors and reduce the need for off-line analyses, we recommend that appropriate individuals review the current chart of accounts structure during fiscal year 2007 and initiate procedural and other changes that will allow financial statement information to be derived directly from the Smithsonian's general ledger to the greatest extent practical.

**Management's Response:**

Smithsonian will endeavor to review the PeopleSoft general ledger structure in order to enhance the financial statement process. Limitations in funding and staffing to perform this review, and the possible need for PeopleSoft programming changes, may inhibit completion of this review in the near future.

***SBV Accounting Procedures***

We noted several areas, as discussed below, where additional analysis, review or procedural changes would help ensure the accuracy and quality of the information included in the books and records of SBV.

- Bank account reconciliations – SBV policy requires that bank reconciliations be approved by an individual other than the preparer. In our sample of 13 bank reconciliations performed during 2006, we noted 6 reconciliations that did not include evidence of review. We recommend SBV reiterate its current policy to require management review and approval (via sign off on the reconciliation) of all monthly bank reconciliations in order to ensure that any unusual or significant reconciling items are identified and resolved.
- Reliance on third party service organizations:
  - a) Catalog inventory (PFSWeb) – SBV utilizes PFSWeb for all catalog fulfillment functions other than inventory purchasing. We noted that SBV management was not reviewing transactional level reports provided by PFSWeb during fiscal year 2006. In order to ensure that there is appropriate oversight of this service provider and that any significant or unusual matters are identified promptly, we recommend that SBV implement procedures for timely review of PFSWeb transaction reports by an appropriate individual during fiscal year 2007.
  - b) Subscription fulfillment (Palm Coast Data) – SBV uses Palm Coast Data reports as the basis for recording revenue, accounts receivable and deferred revenue for the magazine business. Management performs a limited review of the annual “SAS 70 report” (relating to the design and operation of controls in place at Palm Coast Data); however, no documentation of the review is prepared and we noted that user controls at SBV are not designed to respond fully to the user control considerations recommended by the service auditor. In order to improve controls in this area, we recommend that SBV implement procedures to document its review of the Palm Coast Data SAS 70 report and ensure that all relevant user control considerations identified in the report are addressed in fiscal year 2007.
- Accounts receivable – SBV maintains an accounts receivable subsidiary ledger for receivables generated from the magazine business and a secondary subsidiary ledger for receivables generated from all other businesses. However, the secondary subsidiary ledger is not used consistently by all SBV departments and as such, not all receivable data is captured within this subsidiary ledger. Accordingly, a routine aging report is not generated for other SBV receivables, which approximated \$6 million at September 30, 2006. In order to ensure that there is timely follow-up and proper valuation of these



**KPMG Recommendations Arising from the September 30, 2006 Audit**

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receivables, we recommend that management of SBV establish procedures for periodic (e.g., monthly or quarterly) review of the aging and collection status of these receivables in fiscal year 2007.

**Management's Response:**

The SBV Controller has emphasized the policy regarding bank reconciliations to the current staff, including the requirement that appropriate adjustments be approved and recorded on a timely basis.

Senior SBV staff is working with both the Catalog and Magazine Management groups to develop and document review procedures regarding the use of third-party provided financial information. This will include developing criteria for the timely review, analysis and proper valuation of the reported financial information.

Criteria for the proper review of accounts receivable aging and collection status will be developed by the SBV Controller.

***Reconciliation of Intercompany Accounts***

SBV uses an accounting system (Lawson) that is not integrated with the system used for the other units of the Smithsonian (PeopleSoft). Intercompany accounts are used for SBV cash receipt and disbursement transactions processed by OC as SBV cash is managed by SI and, accordingly, all SBV accounts are zero balance accounts. During fiscal year 2006, OC and SBV reconciled the cash transactions on a monthly basis to ensure the accuracy of the information. However, we noted that there is an unreconciled difference between the recorded intercompany account balances in the SBV and OC systems which has been accumulating since SBV implemented separate systems several years ago and which had grown to approximately \$17 million at September 30, 2006. We recommend that appropriate individuals at OC and SBV assign a high priority to their efforts to resolve this difference during fiscal year 2007 and to fully identify the source of such differences to prevent the out-of-balance condition from recurring.

**Management's Response:**

An intensive reconciliation process has already commenced and has been given high priority by the Comptroller of the Smithsonian. Proper account reconciliation for all activity between SBV and SI will be completed by the end of the third quarter of fiscal 2007.

***Journal Entries and Account Reconciliations***

During our testing of journal entries recorded by both OC and SBV, we noted entries posted to the PeopleSoft and Lawson systems which did not contain evidence of review. We also noted a bank reconciliation prepared in OC which contained a \$2.5 million unreconciled difference. In addition, there is no documented review of any entries prepared and recorded by the Financial Accounting Manager in OC nor was there evidence of review of the bank reconciliation prepared by this same individual. Additionally, we noted multiple instances of unresolved differences greater than \$500 thousand in reconciliations provided to us as audit support.

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**KPMG Recommendations Arising from the September 30, 2006 Audit**

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In order to improve controls over journal entries and account reconciliations, we recommend that the Smithsonian implement procedures requiring that all journal entries and reconciliations be reviewed and approved by management and that the approval be documented. Further, although we recognize there is a cost/benefit to investigating differences identified in reconciling accounts, we recommend the Smithsonian develop a policy and process to better monitor, quantify, and document the extent of unresolved errors in its financial accounting process.

Management's Response:

In accordance with current Smithsonian policy, all journal entries are to be properly reviewed and documented. Appropriate personnel will be reminded of their responsibility to adhere to current Smithsonian policy.

In addition, supervisory personnel will be instructed to properly document their review of bank reconciliations prepared by their staff.

***Information Technology Controls***

We noted several areas, as discussed below, for enhancements, to the information technology general controls surrounding the PeopleSoft financial system.

- New User Accounts – Management does not have the ability to determine the date a new user account is added to the PeopleSoft application. This capability is not included as part of the delivered functionality of the version of the PeopleSoft applications currently in use at the Smithsonian (although it maybe available in a later version which could then be addressed as part of a planned software upgrade). We recommend management continue to explore system feasibility to capture user account addition dates or consider this matter in the planned system update.
- Job Transfers – Management does not have the ability to identify users who transfer internally within Smithsonian functions and departments since these changes do not generally require a formal personnel action. The responsibility for identification of staff role changes that impact system access requirements resides with the administrative officers within the applicable Units. Users who perform functions requiring the same or similar access will generally need to request an access change since functions relating to purchasing and purchase cards are restricted within the system by department, origin codes, location codes, and buyer assignments. However, the risk remains that access privileges for individuals who transfer within functions and departments may not be appropriate. We recommend a periodic recertification of all users on a rotating basis to identify users who should have their access modified or removed.
- Remote Network Access – Current Smithsonian procedures allow maintenance of remote network access approval documentation within the Help Desk's HEAT system via the service ticket request. For remote network access granted prior to the implementation of the electronic document maintenance, hard copy approval documentation has not always been maintained. During our testing, we noted documentation was not available for 24 of 30 users sampled. We recommend the Smithsonian include reauthorization of the remote network access as a component of the recertification recommended above to ensure current approvals are available for all users with such access.

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**KPMG Recommendations Arising from the September 30, 2006 Audit**

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- Incompatible System Duties – Smithsonian has granted certain individuals system access that overrides the segregation of duties established within the PeopleSoft system and results in selected users having incompatible duties. In response to our inquiries, the Smithsonian validated the access privileges assigned to these individuals, although no formal approval was maintained. We recommend that Smithsonian regularly review the users with incompatible system duties required for job function to ensure such access continues to be appropriate and retain special approval documentation that details the incompatible duties and the specific reasons why such access is granted. This information may be communicated to IT or OC personnel as management considers appropriate.

*Management's Response:*

Senior systems personnel in the Office of the Chief Information Officer (OCIO) agree with all of the above recommendations. With respect to the comment regarding Remote Network Access, OCIO will review all user accounts provided with remote network access privileges to ensure the appropriate approval documents are on file. All users without appropriate approval documentation will be required to reauthorize their remote access privileges.

***New Accounting Standard: Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans***

In September 2006, the Financial Accounting Standards Board issued a new standard implementing significant changes in accounting by sponsors of defined benefit pension and other retiree benefit programs. The standard's goals are to make financial statement information more useful and transparent for investors, creditors, employees, retirees, and other users.

The new standard will alter the balance sheets of sponsors of defined benefit pension and postretirement plans, in some cases significantly. The changes include:

- (1) recognizing any over- or under-funded status as an asset or liability in the balance sheet;
- (2) eliminating the current option for sponsors that permit plan assets and obligations to be measured as of a date up to three months prior to the balance sheet date;
- (3) revising certain disclosure requirements.

The change in measuring reported assets or liabilities related to the plan's funded status (item 1 above) is effective for Smithsonian for the fiscal year ending September 30, 2007. Elimination of the three month window for actuarial measurements is not required until the fiscal year ending September 30, 2009. The measurement changes, when adopted, do not require retrospective application to prior period information in comparative financial statements. We recommend that appropriate Smithsonian personnel and its consulting actuaries evaluate the impact of the new standard with respect to the postretirement plan for trust employees during fiscal year 2007.

*Management's Response:*

Smithsonian personnel in conjunction with our consulting actuaries will review the impact of the new standard on the postretirement plan for trust employees prior to the end of fiscal 2007.

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**KPMG Recommendations Arising from the September 30, 2006 Audit**

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***New Auditing Standard: Reporting on Internal Control***

The Auditing Standards Board issues standards governing the conduct of independent audits, including the manner in which internal control weaknesses are communicated to management and board committees of all organizations subject to audit.

In May 2006, the Auditing Standards Board released SAS No. 112, *Communicating Internal Control Related Matters Identified in an Audit*. For audits as of December 31, 2006 and thereafter, this new standard requires auditors of private organizations to conform to the definitions used for public companies in characterizing control deficiencies.

It is clear that these new definitions “lower the bar” in requiring more matters to be characterized as “significant deficiencies” or “material weaknesses” in the annual written management letter received by our clients. The term “reportable condition” will no longer be part of audit terminology, as it is replaced by the concept of “significant deficiency.” For many organizations, as auditor we may be required to expand our documentation of the effectiveness of certain types of controls. Unlike for audits of public companies however, there remains *no requirement for the audit firm to issue an opinion* on the effectiveness of controls over financial reporting for private organizations.

It is important for clients and their audit committees to appreciate that the new standard identifies specific controls that, if not deemed effective by the auditor, are to be reported as *at least* significant deficiencies, with consideration as to whether a material weakness is indicated. The standard further identifies a number of high level controls (including the overall control environment, effective board oversight, and compliance functions for regulated organizations) that, if not effective, are *strong indicators* of a reportable material weakness.

For organizations receiving federal assistance such as the Smithsonian, the GAO is now addressing how these new requirements will affect the compliance audits of federal awards under Circular A-133. The GAO has issued a recent proposal to conform their reporting definitions to those described above which will be applicable to financial statement audits.

We recommend that Smithsonian financial management become familiar with the information in the new standard, and help educate management and the board on the changes. Management should also consider reviewing the sufficiency of policies and documentation related to those controls specifically named in the standard, which may or not have been subject to specific testing as part of past audits.

**Management’s Response:**

Smithsonian financial management will become familiar with the new requirements of the Auditing Standards Board SAS No. 112. In addition, management will review current Smithsonian policies and documentation for sufficiency, as they relate to the specific controls named in this standard.

**KPMG Recommendations Arising from the September 30, 2006 Audit**

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***Investments Held by Trustees***

We noted that the Smithsonian did not have current information relating to investments held in a trust managed by a trustee at September 30, 2006. The trust was valued at approximately \$7 million based on information provided by the trustee as of September 30, 2005. It is important to recognize that the Smithsonian's responsibility over the valuation of investments extends to investments held by third party trustees, such as with perpetual trusts and split-interest agreements. We recommend that the Smithsonian implement procedures to obtain investment statements from all third party trustees as of its balance sheet date (and more frequently, where significant) and develop the appropriate level of understanding and documentation to support the reported fair values of the trust assets.

**Management's Response:**

We have contacted the third party Trustees and have obtained agreements that they will provide data for the Smithsonian year end valuation on a more timely basis to allow the Institution to record a more current valuation in its financial statements. They have also agreed to provide additional information on the basis for the valuation of the Trusts.

# EXHIBIT 38



## Smithsonian Institution

Lawrence M. Small  
Secretary

May 30, 2000

The Honorable Ralph Regula  
Chairman  
Subcommittee on Interior and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Smithsonian Institution respectfully requests permission of the Subcommittee to reprogram \$5,000,000 appropriated in the FY 2000 Salaries & Expenses account. We make this request in order to attract new audiences to the Smithsonian and to expand and improve the channels by which we reach them. The enclosed copy of my memorandum to senior Smithsonian staff outlines this concept broadly.

Our request consists of three items.

- \$3,000,000 (one-time)—lapsed salary funds to support the pan-Institutional exhibition on the American presidency, which will open at the National Museum of American History in November 2000 and will ultimately travel.

We are withdrawing funds equivalent to three months of lapsed salary costs from all Federal vacancies occurring in this fiscal year. We project a total accumulation of \$3,000,000.

The exhibition will feature objects from Smithsonian collections, and those of others, which illustrate themes of the presidency, such as campaigns, elections, and inaugurations. Popular images and a complete timeline of American Presidents—from George Washington to November's winner—will be features of the exhibition to be initially housed in a newly refurbished, 5,500 square-foot gallery on the third floor of the Museum. Fund raising for additional resources is well under way.

- \$1,000,000 (one-time)—draw downs of no-year balances in the Information Resource Management and Research Equipment pools in the amounts of \$700,000 and \$300,000 respectively.

With these funds the Smithsonian Institution Traveling Exhibition Service (SITES) will develop prototypes of new, collections-based exhibitions that are easy to transport, install, and maintain, along with strategies to increase the total volume of such exhibitions in its program. As a result, they also will be less expensive, more suitable for venues other than museums, and allow for the successive replacement of artifacts and curatorial information on different themes over extended periods of time.

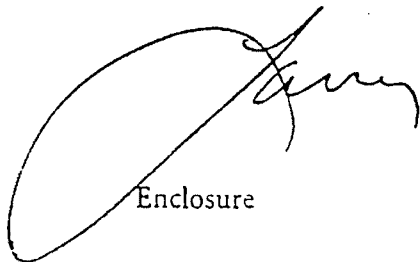
- \$1,000,000 (permanent)—from the Information Resource Management and Research Equipment pools in the amounts of \$600,000 and \$400,000 respectively.

Of these funds, \$300,000 will be applied to the costs of reorganization, including a new division for managing American museums and national programs. The balance of \$700,000 will be used for national programs—Smithsonian Affiliations, the Smithsonian Center for Education and Museum Studies, and the Smithsonian Associates; for accelerating current SITES activity; and to provide funds to support related units such as the offices of Government Relations and Communications.

We have not easily reached the decision to draw down pool funds or to ask that half of those funds be permanently reprogrammed. However, we have clear, near-term opportunities to engage audiences throughout the country. At the same time, we have yet to bring on board a Chief Technology Officer who will analyze our entire information technology structure. We have concluded that immediate needs related to information technology and research equipment can be managed within the balances that remain in the pools, while releasing the amounts requested for significant public purposes. However, recognizing the importance of the uses of these pool funds, particularly those that relate to providing more access to our collections, we intend, based on careful analysis, to make every effort to recapture these funds and restore them to the base of the pool programs in the future.

Please let me know what additional information you require in support of this request. In addition, you may be certain of the willingness of my staff to work with yours in order to achieve the objectives described.

All the best,



Enclosure

bc: Ginny James (Gorton), Peter Kiefhaber (Byrd), Debbie Weatherly (Regula) Leslie Turner (Dicks), Secretary's Files (3), Under Secretary O'Connor, Under Secretary Burke, Under Secretary Bailey, Tom Lentz, Maura Reidy, Jim Hobbins, Mary Tanner, Austin Matthews, Barbara Schnieder



**Congress of the United States**  
Washington, DC 20515

June 12, 2000

Mr. Lawrence Small  
Secretary  
Smithsonian Institution  
1000 Jefferson Drive, S. W.  
Washington, D. C. 20560-0016

Dear Mr. Secretary:

By letter of May 30, 2000, you requested the reprogramming of \$5,000,000 in fiscal year 2000 funds to support several programs. The large amount of funding identified as available for redirection concerns the Committees in light of the fact that there are less than four months remaining in the current fiscal year.

The request is denied for several reasons. First, exhibits are justified and approved in the budget process and accelerating such an exhibit without a compelling reason is not an intended use of the reprogramming process. Second, you state that you hope to restore base funding for your offsets in the future and, again, this is a misuse of the reprogramming process. Third, you propose to use appropriated funds for activities previously funded with non-appropriated dollars. This constitutes starting a new program with appropriated funds and is another violation of the reprogramming process.

You are aware of the Committees' continuing concern with respect to the backlog maintenance needs of the Smithsonian. Indeed, your remarks suggest you share that concern. This reprogramming purports to identify "excess funds" but redirects those funds into bureaucratic expansion and program accelerations. Such initiatives should be addressed through the budget process. To the extent that any excess funds are available, the Committees would be willing to consider a reprogramming request to direct those funds toward necessary maintenance and operational activities such as security, conservation of collections and the escalating requirements of the National Museum of the American Indian. Further, the Committees are willing to consider a budget amendment to the Smithsonian's fiscal year 2001 request in support of additional funds to create an American presidents exhibit provided that more detailed information is made available to explain specifically how such funds will be used.

In closing, the Committees wish to express their concern over a recent Washington Post article, which reports that approval has been given by the Smithsonian to move forward in spending millions on the American presidents exhibit. While understanding the Smithsonian's eagerness to proceed with its plans, the Committees question the appropriateness of announcing

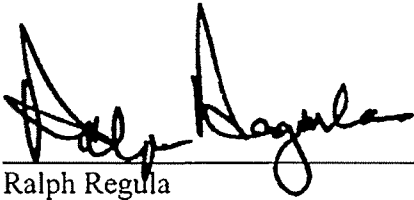
June 12, 2000

Page two

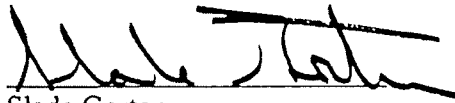
a project for which funding has yet to be resolved. This criticism does not call into question the merits of the proposed exhibit, but rather is meant to underscore the Committees' participation in this process.

We share your enthusiasm for attracting new audiences to the Smithsonian and look forward to working with you through the established budget justification process to achieve that mutual goal.

Sincerely,



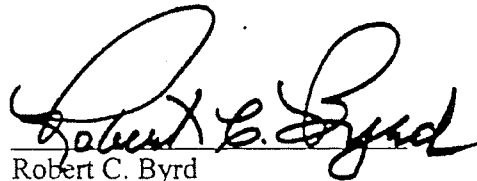
Ralph Regula  
Chairman  
House Appropriations Subcommittee  
on Interior and Related Agencies



Slade Gorton  
Chairman  
Senate Appropriations Subcommittee  
on Interior and Related Agencies



Norm Dicks  
Ranking Minority Member  
House Appropriations Subcommittee  
on Interior and Related Agencies



Robert C. Byrd  
Ranking Minority Member  
Senate Appropriations Subcommittee  
on Interior and Related Agencies

# EXHIBIT 39



2001 M Street, N.W.  
Washington, D.C. 20036

April 4, 2001

The Audit and Review Committee of the Board of Regents  
Smithsonian Institution

Dear Committee Members:

We have audited the financial statements of the Smithsonian Institution (the Smithsonian) as of and for the year ended September 30, 2000 and have issued our report thereon dated January 12, 2001.

Based on our audit for fiscal year 2000 and our review of the status of the recommendations we made in connection with our audit for the year ended September 30, 1999, we developed a number of recommendations relating to accounting procedures, internal controls and other operating matters. The recommendations that we consider most significant are summarized in the attachment to this letter. These recommendations have been discussed with appropriate members of management and their responses are included in the attachment along with information concerning the status of the recommendations we made in our fiscal year 1999 audit. Our other recommendations, which relate primarily to technical accounting issues or procedural matters in specific offices or areas of the Smithsonian, have been summarized in a separate letter to Ms. Alice C. Maroni.

As you know, the primary purpose of our audit is to express an opinion as to whether the Smithsonian's financial statements present fairly its financial position, changes in net assets and cash flows. In planning and performing the audit of the financial statements of the Smithsonian, we considered internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. The review which we made of internal control would not necessarily disclose all weaknesses in internal control. Further, our audit is based on tests of financial balances and transactions and errors or fraud might exist that an audit may not disclose. We have not considered internal control since the date of our report.

We will continue to assist management in implementing the recommendations, wherever appropriate.

\* \* \* \* \*



Page 2

The Audit and Review Committee of the Board of Regents

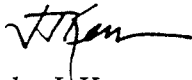
Smithsonian Institution

April 4, 2001

It was a pleasure to work with the management and employees of the Smithsonian. We sincerely appreciate the courtesies and assistance extended to our team in the course of our work.

Very truly yours,

KPMG LLP



John J. Keenan

*Partner*

Cc: Mr. Lawrence M. Small, Secretary  
Mr. Robert D. Bailey, Under Secretary for Finance and Administration  
Ms. Alice C. Maroni, Chief Financial Officer  
Mr. Thomas D. Blair, Inspector General

*Smithsonian Institution*

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**Fiscal Year 2000 Management Comments from KPMG**

|                                            |   |
|--------------------------------------------|---|
| Core Financial System.....                 | 1 |
| Accounting for Property and Equipment..... | 2 |
| Status of Prior Recommendations:           |   |
| Core Financial System.....                 | 3 |
| Centralized Development Process.....       | 3 |
| System Accreditation Process .....         | 3 |
| Consideration of a Finance Committee ..... | 3 |

### **Core Financial System**

In our letter of February 10, 2000, we recommended that management assign a high priority to obtaining funding for a new core financial system and to developing a timetable for implementation of that system. We understand that no federal appropriations were made for the new financial system in the fiscal year 2001 budget and that the outlook for the fiscal year 2002 budget is uncertain. Due to the operating risks and inefficiencies inherent in the current core financial system, we believe that it is critical for the Smithsonian to avoid further delays in initiating the project to replace the system. Accordingly, we recommend that management develop a contingency plan to finance the new system from trust sources in the event that the federal appropriations for fiscal year 2002 do not provide funding for this project (or provide funding that is inadequate to meet the need).

### *Smithsonian's Response*

We agree with KPMG's recommendation. Smithsonian's management has assigned the highest priority to obtaining a new core financial system. Our Chief Technology Officer, has defined a clear approach and methodology for implementing a new core system. At this time, the Chief Financial Officer is focused on pursuing federal funding beginning with 2002.

### **Accounting for Property and Equipment**

The Office of Physical Plant (OPP) is responsible for overseeing the construction of new facilities and the repair/restoration of existing facilities. OPP manages the contracts with architects, engineers, construction contractors and others working on the facilities and tracks related commitments and payments (primarily using spreadsheet software). OPP is also responsible for maintaining the detailed financial and accounting records relating to property and equipment costs, summarizing related transactions and activity and communicating the required accounting information to the Office of the Comptroller.

OPP's primary focus is project/contract management. Its systems and procedures are not designed to serve as an accounting and management control system for property and equipment assets and its records are not linked to the Smithsonian Financial System (SFS). As a result, the accounting for property and equipment is cumbersome and time consuming, the risk of errors is higher and there is limited accounting control over the assets.

In the circumstances, we recommend that management give serious consideration to acquiring and implementing a property and equipment accounting and management system as part of the new core financial system. We believe that this would allow the Smithsonian to address effectively the issues summarized above while significantly improving its capacity to address potentially significant near-term challenges in this area, including the following:

- A substantial increase in the volume of property-related activity, including construction of new facilities (such as the National Museum of the American Indian and the National Air and Space Museum Dulles Center) and the repair/restoration of existing facilities required to address the deferred maintenance issue;
- Recently proposed changes in the accounting rules relating to property and equipment which would require component-level depreciation of facilities and impose much more stringent and detailed requirements with respect to accounting for replacements and renovations of property and equipment assets.

### *Smithsonian's Response*

We agree with KPMG's recommendation. We have included "a property and equipment accounting and management system" in our overall requirements for a new core financial system.



## *Status of Prior Recommendations*

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The status of the recommendations set forth in our letter of February 10, 2000 is summarized as follows:

### **Core Financial System**

Management continues to use consultants to maintain its core financial system, SFS, until a new system can be implemented. An updated recommendation with respect to a financial plan for the new system is presented above.

### **Centralized Development Processes**

This recommendation related to capturing all contribution activity in the central financial system in the period it occurs. We noted continued improvement in this area, with only immaterial contributions from 1999 recognized in 2000.

### **Systems Accreditation Process**

This recommendation related to consistent enforcement of Smithsonian policy relating to accreditation of new systems before they go into production status. We understand that the process set forth in the Smithsonian *Computer Security Manual* is considered outdated and that the Office of Technology is in the process of developing a new process that will be implemented for all new systems in the future.

### **Consideration of a Finance Committee**

At its May 8, 2000 meeting, the Board of Regents approved an amendment to the by-laws under which a new Finance and Investment Committee was formed. This committee performs the functions of the former Investment Policy Committee and assumed the responsibilities often performed by a Finance Committee.

# EXHIBIT 40



2001 M Street, N.W.  
Washington, DC 20036

The Audit and Review Committee of the Board of Regents  
Smithsonian Institution

Dear Committee Members:

We have audited the financial statements of the Smithsonian Institution (the Smithsonian) as of and for the year ended September 30, 2001 and have issued our report thereon dated February 8, 2002.

Based on our audit for fiscal year 2001 and our review of the status of the recommendations we made in connection with our audit for the year ended September 30, 2000, we developed a number of recommendations relating to accounting procedures, internal controls and other operating matters. The recommendations that we consider most significant are summarized in the attachment to this letter. These recommendations have been discussed with appropriate members of management and their responses are included in the attachment along with information concerning the status of the recommendations we made in our fiscal year 2000 audit. Our other recommendations, which relate primarily to technical accounting issues or procedural matters in specific offices or areas of the Smithsonian, have been summarized in a separate letter to Ms. Alice C. Maroni.

As you know, the primary purpose of our audit is to express an opinion as to whether the Smithsonian's financial statements present fairly its financial position, changes in net assets and cash flows. In planning and performing the audit of the financial statements of the Smithsonian, we considered internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. The review that we made of internal control would not necessarily disclose all weaknesses in internal control. Further, our audit is based on tests of financial balances and transactions and errors or fraud might exist that an audit may not disclose. We have not considered internal control since the date of our report.

We will continue to assist management in implementing the recommendations, wherever appropriate.

\* \* \* \* \*

It was a pleasure to work with the management and employees of the Smithsonian. We sincerely appreciate the courtesies and assistance extended to our team in the course of our work.

KPMG LLP

April 9, 2002

Cc: Mr. Lawrence M. Small, Secretary  
Ms. Alice C. Maroni, Chief Financial Officer  
Mr. Thomas D. Blair, Inspector General



*Smithsonian Institution*

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**Fiscal Year 2001 Management Comments from KPMG**

Documentation of Policies and Procedures..... 1

Smithsonian Business Ventures ..... 2

Status of Prior Recommendations:

    Core Financial System ..... 3

    Accounting for Property and Equipment ..... 3

**DOCUMENTATION OF POLICIES AND PROCEDURES**

**KPMG Comment:**

The Smithsonian's practices for communicating and documenting accounting policies and procedures have generally been informal. In addition, we noted that review/approval procedures performed with respect to reconciliations, reports and/or analyses that support account balances or entries to the accounts are frequently not documented.

We believe that the Smithsonian would benefit from a more formal approach to the documentation of its accounting policies and procedures. Accordingly, we recommend that the Smithsonian consider assigning a team to assume responsibility for developing a comprehensive accounting policies and procedures manual in 2002. This manual would provide information about the application of significant accounting policies and guidance on related procedures, including requirements for documentation of the review/approval procedures performed. It could be made available on the network and would provide a valuable reference source for accounting and management personnel and a useful training tool for new employees or employees who change responsibilities.

**Smithsonian Response:**

We agree with KPMG's recommendation. The Office of the Comptroller (OC) completed the staffing of its Financial Policies and Procedures Division in March 2002. This Division has developed a fiscal year 2002 strategic plan for creating an OC financial procedural manual as well as updating Smithsonian Directives related to financial policies.

**SMITHSONIAN BUSINESS VENTURES**

**KPMG Comment:**

In connection with our audit, we performed a review of the information technology (IT) infrastructure and the sales and inventory management processes of Smithsonian Business Ventures (SBV) and provided a detailed report of our findings and recommendations to SBV management. Our principal recommendations included the following:

- SBV should develop and implement standard policies and procedures in various areas in order to improve controls over its IT resources. These areas include systems security, logical access and program change controls and procedures to discontinue the access of terminated employees to the SBV network;
- SBV should explore electronically interfacing the inventory management systems used for the catalogue and museum stores and the advertising management system used for the magazines with its general ledger accounting system (Lawson) in order to improve the efficiency of the accounting function and reduce the potential for errors;
- SBV should develop and implement procedures to monitor its inventory management systems in order to identify unauthorized or irregular activity;
- The Catalogue division should implement a formal policy with respect to merchandise credits and refunds and consider revising its return policy to include time and condition parameters. The division should also adopt the average costing method for its inventory in order to be consistent with other divisions of SBV; and
- The Museum Stores division should perform physical inventories more frequently (perhaps using a cycle count approach) and implement procedures to follow-up on discrepancies promptly. The division should also develop and implement an inventory obsolescence policy.

**Smithsonian Response:**

SBV has received KPMG's report, and is currently preparing a detailed response to each recommendation. In general, management is in agreement with KPMG's recommendations, and in most cases, corrective action is under way.

A few of the recommendations require further study, as there are indications that specific actions proposed by KPMG may not be cost beneficial. Several recommendations relating to the Catalogue systems are being addressed in connection with the planned outsourcing of the Chantilly facility; the outsourcing itself is expected to result in major changes to the systems.

The status of the recommendations set forth in our letter of April 4, 2001 is summarized as follows:

**Core Financial System**

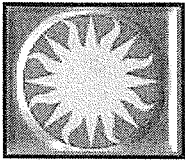
This recommendation related to developing a contingency plan to finance a new core financial system to replace the Smithsonian Financial System (SFS). Federal appropriations were made for the system in the fiscal year 2002 budget and management expects to implement the new Peoplesoft core financial system for the fiscal year beginning October 1, 2002.

**Accounting for Property and Equipment**

This recommendation related to acquiring and implementing a property and equipment accounting and management system as part of the new core financial system. Management has included a property and equipment accounting and management system in the overall requirements for the new core financial system.

# EXHIBIT 41



The Electronic Smithsonian

## Installation Address, 19 September 1994

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I. Michael Heyman, law professor and former chancellor of the University of California at Berkeley, was installed Sept. 19 as the 10th secretary of the Smithsonian Institution. Chief Justice William Rehnquist, Smithsonian chancellor, presided at the ceremony, which was held outdoors on the Mall in front of the Castle. Secretary Heyman succeeds Robert McC. Adams, who has retired after 10 years as secretary.

The U.S. Navy Ceremonial Band performed a medley including "This is My Country," "Columbia" and "America," and the audience sang the national anthem during the Presentation of Colors by the Joint Armed Forces Color Guard.

Chancellor Rehnquist opened the ceremony, remarking on "the infrequent succession of great scholarly leaders, rooted in the rhythms of academe more than politics," that has brought SI nine secretaries in a span of time that has seen "30 presidents, 33 speakers of the house and 12 chief justices." The installation, he added, was "momentous by any Washington standards." Rehnquist then announced that the regents had bestowed on Adams the title of Secretary Emeritus.

Adams thanked the regents and recalled "just such a splendid day in September a decade ago," at his own installation. The task of managing the Smithsonian, he said, is like uneasily threading along a knife edge between beckoning abysses...change and opportunity and stability and caution. "My own conviction is that a decade is long enough for this balancing act." He spoke of his sense of satisfaction and pleasure at the regents' choice of Heyman. "He is an acutely perceptive, supple, pragmatic, broad-ranging generalist.... I think he can be counted on to provide wise leadership during the lean times that lie ahead."

Heyman then stepped to the podium with his wife, Terese, and Chancellor Rehnquist presented the new secretary with the 5-inch brass key that has become the traditional symbol of installation in the position. Adams received it from then-Chancellor Warren Burger in 1984, and S. Dillon Ripley received from retiring Secretary Leonard Carmichael in 1964. It is believed to be an original key to the Castle.

Heyman, who is 64, was elected by the Board of Regents at a meeting May 25. (See "Ira Michael Heyman to become the Smithsonian's 10th secretary," Page 1, *The Torch*, July 1994.) His installation address follows:

Distinguished guests: One of my mentors, Clark Kerr, when running afoul of a new governor who was outraged by 1960s protest and disruption at the University of California, told reporters that he left the Presidency fired with the same enthusiasm he had had when appointed President years before. You should know that I, similarly, am fired with enthusiasm for this extraordinary Institution, but I don't have any intention to speculate on how my tenure might eventually end.

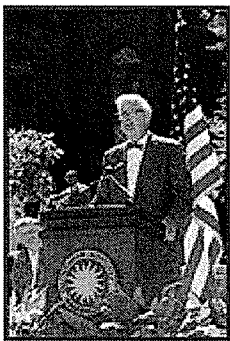
Every Secretarial era reflects unique circumstances and poses its own opportunities and problems. At

present, resources are relatively short. My recent predecessors until a few years ago could count on a generous Congress and Executive Branch. Public fiscal prospects, however, are bleaker at this time. Agency budgets are largely capped. Appropriation subcommittees must stay within set limits.

While we must argue vigorously for special treatment, realism counsels that we not depend solely on public revenues to grow substantially in the near future. Realistically, we must work very hard to guard against erosion of our base budget and for adequate resources to fund the heavy future obligations which the Smithsonian and the Congress and the Office of the President have jointly undertaken, such as the completion and full staffing of the National Museum of the American Indian.

This means that the Smithsonian must rely more heavily in the future on private support from individuals and corporations. A systematic effort to increase private support has started very well under Secretary Adams. We must enhance that success by working closely with donor groups--ones that already exist and others that will come together in the future especially in support of each of our museums and other major activities. And we must enlarge our connections with the corporate world.

Substantial movement in these directions presents great opportunities to shore up our resource base, but change is also threatening. Many, especially internally, shrink from any identification of the Smithsonian with corporate sponsors. I remember outrage among some faculty at Berkeley when professional chairs endowed by corporations bore the name of the business donor. We obviously should not sell the Smithsonian's name; on the other hand, we should not shrink from tasteful indications in advertising that the corporate donor supports the Smithsonian.



I refer to this because we're working very hard to interest corporate sponsors in joining our 150th-year celebration. If we're successful, the Institution's logo will appear broadly, and the Smithsonian will go public nationally on television and media in ways new to all of us. I ask my colleagues to applaud this audacity rather than grumble at the change.

This new era also demands from public (as well as private) organizations increased fiscal accountability. We must use our resources efficiently and intelligently both to husband them and to underscore our credibility to those who provide them--the government and our donors. I believe that frugality also has a positive side. For example, it will require us to agree more specifically than in the past on the dimensions of our mission.

The Smithsonian resembles to me a great public university with a very broadly stated mission: the increase and diffusion of knowledge. Within this we have centered on three major tasks. First is public education (largely through our exhibitions of art and scientific and historical objects, but also in a host of auxiliary ways: tours, classes, print and audio publications, and lectures). Second is a university--like research operation, primarily in the biological and physical sciences. We also accomplish serious research in the arts, humanities, and social sciences, but there more frequently in relation to organizing exhibitions. The third task is hosting and maintaining at last count 140 million objects (this undertaking has led, of course, to that description of us as "The Nation's attic").

Generally speaking we do an excellent job. Most of our exhibitions are well conceived. Each of our museums is in the top groupings of like museums in the U.S. and the world. We carry on research

programs important for both the creation of new knowledge and the application of knowledge to solve real-world problems. We expend considerable resources maintaining our collection.

It is crucial that we sustain excellence in all that we do. If our resource base shrinks, we must be prepared to jettison the less important of our activities rather than reduce all our activities pro rata and thus threaten the excellence of our most important ones. To do this rationally we have to plan, and I expect that a goodly portion of my time, and the time of my colleagues, will be devoted to shaping a comprehensive plan for the Institution for consideration of the regents.

Tough financial times, however, ought not to mean institutional paralysis. We must find ways to finance needed new activities, and I have two in mind presently.

One is deeper participation by the Smithsonian in the environmental debates raging in this country. My time at the Department of Interior (and my background in teaching) reinforce my belief that the Smithsonian can convene and preside over conferences that explore both the scientific and policy issues that surround contemporary environmental disputes. And we can do this in an even-handed manner that involves responsible people on the many sides of issues and that will inform the political debate and give interested people a relatively neutral template through which to make their own judgments.

I am appointing Thomas Lovejoy as a Counsellor to me, to the Secretary, and I am asking him to plan the first of what I hope will be annual conferences. The first topic, timely because Congress will be facing the need to legislate, is biodiversity and endangered species. And I'm looking down there at my former boss, the Secretary of the Interior, and wondering if he's glad or sad that we make such an undertaking.

As the example indicates, I see as an important educational role of the Smithsonian the presentation of facts that surround controversial subjects--subjects that are within the circle of Smithsonian activity and expertise. We are all aware that a planned exhibition at the National Air and Space Museum on the 50th anniversary of the ending of the war in the Pacific by the dropping of atomic bombs on Hiroshima and Nagasaki, and the display of the Enola Gay, has caused considerable controversy.

The Smithsonian could have avoided controversy by ignoring the anniversary, or by simply displaying the Enola Gay without comment, or setting forth only the justification for the use of atomic weapons without either reporting the contrary arguments or indicating the impact of the bombs on the ground. My view is that the Smithsonian has a broader role than simply displaying items in the so-called Nation's attic or eschewing important topics because of the political difficulties created by the exhibition. The Smithsonian, as a meaningful and responsible public educational institution, should seek to present matters in their full dimension. At the same time, however, we should do our level best to be balanced, especially when we deal with matters that engender serious political controversy. Our viewers should make up their own minds.

This is what we are trying to do now, as we revise the Enola Gay exhibition. Our first script for the exhibition was deficient. Too much of the context for the use of atomic bombs was taken for granted. In this and other ways, the proposed exhibition was out of balance. This is being remedied as we consult with additional historians and interested groups. I believe that our final product, to go on exhibition next May, will properly present the record of what happened and will be the basis for justified national pride in the sacrifices of our veterans, the technical proficiency of our scientists, and the productivity of our industries. And this evenhandedness is what I have in mind with environmental topics like the protection of endangered species.

The second activity, much more massive and potentially important for the Institution, is the development of our capacity to give electronic access to our collections throughout the nation. The technical capacity exists now to record our collections in digital form and to transmit them in on-line

computer networks and on discs. Presently, a number of firms are experimenting with like television transmission, although it will take some time before substantial numbers of homes can be reached in such networks. In the short run, however, it is probable that transmissions will be broadly accessible to schools; the formal educational opportunities by one-way or interactive systems will become substantial in the near future.

These technological developments will enable the Smithsonian to be truly national. We presently share our exhibitions through a splendid system of traveling shows, and we obviously share research information through articles and books and on-site work by visiting scholars. Electronic communication, however, broadens our potentialities immensely and at a relatively low cost, certainly at a much lower cost than seeking to build buildings and run them throughout the United States.

Parts of the Smithsonian are already engaged in these undertakings. I intend to devote considerable time to enhancement and coordination of our present activities. Five years hence I hope that the Smithsonian (together with the Library of Congress, the National Gallery, and other federal, state and private agencies) will be deeply engaged in this new world of information transmission and sharing. We should be more than the place to visit in Washington; we should also be present throughout the country in a whole variety of ways.

My last observation suggests that the Smithsonian should be working with other institutions in sharing electronic communications. A broad view of institutional interrelationships is another way to enhance and enlarge our effectiveness. Our joint program with Harvard in astrophysics is an example of what I mean. I hope that we will explore deeply its effective emulation in natural history and other of our activities.

There is a third area of prior achievement which deserves our continued attention and energy. The Smithsonian is becoming self-consciously inclusive: more of its exhibitions and activities reflect the art, culture and history of all of our major ethnic groups. We still have a way to go, and we will be paying special attention in the next few years to that large group of Americans of Hispanic origin whose culture has not adequately been represented at the Smithsonian. We do this not to differentiate, but to educate all of us about our origins in a way that will foster senses of pride and thus counter separation and make more attainable the creation of one set of Americans out of many.

I am delighted to be named the 10th Secretary of the Smithsonian Institution. I look forward with pleasure to leading one of the great cultural and scientific institutions of the United States. I urge all of you to participate deeply in our 150th-year celebration through your energy, your creativity, and, when the time comes, your pocketbook. Thank you.



[Return to the Electronic Smithsonian](#)

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