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United States Government Accountability Office
Washington, DC 20548

March 31, 2009

The Honorable Daniel K. Inouye
Chairman
The Honorable Thad Cochran
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable David R. Obey
Chairman
The Honorable Jerry Lewis
Ranking Member
Committee on Appropriations
House of Representatives

Subject: *Review of Special Counsel Expenses for the 6 Months Ended September 30, 2008*

This report presents the results of our review of the expenses of the Office of Special Counsel-Patrick J. Fitzgerald (OSC-Fitzgerald) for the 6 months ended September 30, 2008. The expenses we reviewed were those made by the Department of Justice (DOJ) between April 1, 2008, and September 30, 2008, from the permanent, indefinite appropriation (fund) for OSC-Fitzgerald. To determine if there were additional payments made subsequent to the 6-month period covered by our review, we also reviewed expenses paid out of the fund between October 1, 2008, and February 28, 2009. DOJ determined that the appropriation established by Public Law 100-202¹ to fund expenses by independent counsels pursuant to the independent counsel law or other law is available to fund the expenses of U.S. Attorney Patrick J. Fitzgerald, who was appointed as a special counsel within the Department of Justice by the then-Acting Attorney General.² Under this law, we are required to perform semiannual financial reviews of expenses from the fund, and, we report our findings to the House and Senate

¹ The permanent, indefinite appropriation was established by Pub. L. No. 100-202, § 101(a), title II, 101 Stat. 1329, 1329-9 (Dec. 22, 1987), 28 U.S.C. § 591 note.

² We reviewed the legal authority for the Department of Justice to use the permanent, indefinite appropriation to fund the expenses relating to Special Counsel Fitzgerald's investigation and, in our opinion to the Chairmen of the House and Senate Appropriations Committees, concluded that such use was not an illegal, improper, or unauthorized use of the appropriation. B-302582 (Sept. 30, 2004).

Appropriations Committees. To satisfy this requirement, we review each expense processed by DOJ to determine whether it was properly authorized and approved, supported by appropriate documentation, recorded accurately, and made in accordance with selected provisions of laws and regulations.

Background

On December 30, 2003, the then-Acting Attorney General appointed U.S. Attorney Fitzgerald as a Special Counsel to investigate whether officials of the George W. Bush administration illegally disclosed the identity of an undercover Central Intelligence Agency officer. In March 2007, after a jury trial, an administration official was convicted of perjury, lying to the Federal Bureau of Investigation, and obstruction of justice in the investigation. In July 2007, the President of the United States commuted the prison term imposed by the sentencing judge upon the administration official. The administration official dropped his appeal of his convictions in December 2007.

Expenses during the period of April 1, 2008, through September 30, 2008, relate to congressional requests for information as well as some expenses paid during this period that were primarily reimbursements of travel and lodging incurred during the appeal process. The activities of the Special Counsel were, for all practical purposes, concluded as of March 2008, but the office of the special counsel will remain open to respond to congressional requests for information.

Results of Our Review

Our review of the expenses on behalf of Special Counsel Fitzgerald covering the 6 months ended September 30, 2008, found that DOJ processed expenses totaling \$14,806. The expenses consisted of personnel compensation and benefits, travel, and lodging. We found that the expenses for personnel compensation and benefits, travel, and lodging were supported by appropriate documentation and were properly authorized, approved, and recorded. A breakdown of Special Counsel Fitzgerald's expenses for the 6 months ended September 30, 2008, is presented in table 1 below.

Table 1: Special Counsel Expenses for the 6 Months Ended September 30, 2008

Description	Amount
Personnel compensation and benefits	\$ 8,093
Travel and lodging	\$ 6,713
Total	\$ 14,806

Source: DOJ Financial Management Information System.

For the period of our review, personnel compensation and benefits of employees assigned to work with the special counsel amounted to \$8,093. The special counsel also incurred travel expenses of \$6,713, primarily consisting of travel

expenses paid during the current period that were reimbursements of travel and lodging expenses previously incurred during the appeal process.

Our tests for compliance with selected provisions of laws and regulations disclosed no instances of noncompliance with respect to the expenses processed by DOJ on behalf of OSC-Fitzgerald that would be reportable under U.S. generally accepted government auditing standards.

In conducting our review, we determined that from October 1, 2008, through February 28, 2009, the only additional expenses paid out of the permanent indefinite appropriation were \$50 in compensation expenses related to Special Counsel Fitzgerald. The expenses were supported by appropriate documentation and were properly authorized, approved, and recorded. In addition, there was a credit of \$875 for a check that was never deposited by a vendor and thus voided by the DOJ.

Objectives, Scope, and Methodology

Our objectives were to determine whether the expenses processed by DOJ on behalf of OSC-Fitzgerald for the 6-month period were properly authorized and approved, supported by appropriate documentation, recorded accurately, and made in accordance with selected provisions of laws and regulations.

To perform our review, we obtained expense data files from the DOJ and traced the recorded expenses to supporting documentation including payroll records, travel vouchers, and invoices. We reviewed all expenses made between April 1, 2008, and September 30, 2008, for proper authorization and approval to determine whether they were supported by appropriate documentation and recorded accurately by DOJ on behalf of OSC-Fitzgerald. We also reviewed expenses to determine whether they were made in accordance with selected provisions of Title 5 of the United States Code, the Prompt Payment Act, and selected provisions related to pay administration and travel regulations. Finally, we reviewed expenses paid out of the permanent indefinite appropriation between October 1, 2008, and February 28, 2009, to determine the extent of additional payments made subsequent to the 6-month period covered by our review. We were not required to, nor did we test, the appropriateness of the expenses.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives. We performed our review in Washington, D. C., from December 2008, through March 2009. We provided a draft of this correspondence to Special Counsel and the Department of Justice, Justice Management Division. These entities agreed with the facts and conclusions presented in our draft correspondence.

We are sending copies of this report to the Chairman and Ranking Members of the Senate and House Committees on Appropriations, the Attorney General, the Special Counsel, and other interested parties. In addition, this correspondence is available at no cost on GAO's Web site at <http://www.gao.gov>. Please contact me at (202) 512-3406 or sebastians@gao.gov if you or your staff have any questions concerning this correspondence. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. GAO staff who made major contributions to this correspondence are Julie Phillips, Assistant Director; Vivian Gutierrez; and Richard Cambosos.



Steven J. Sebastian
Director Financial Management and Assurance

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