



# Hurricane Payments and Training

*September 13, 2018*

Fiscal Year 2018 Report to Congress



Homeland  
Security

# Message from the Secretary

September 13, 2018

I am pleased to present the following report, "Hurricane Payments and Training," which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report has been compiled pursuant to a requirement in Section 212 of the Fiscal Year (FY) 2018 Department of Homeland Security Appropriations Act (P.L. 115-141) and its accompanying Joint Explanatory Statement.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Kevin Yoder  
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 282-8203.

Best Regards,



Kirstjen M. Nielsen  
Secretary



# Executive Summary

ICE is committed to improving the financial payments process and communications for emergency evacuations. ICE submits the enclosed report to satisfy the requirements in P.L. 115-141 and its accompanying Joint Explanatory Statement.

This report explains circumstances surrounding the erroneous payments made during Hurricanes Irma and Maria. ICE made payments to certain evacuated employees related to evacuation of themselves and their dependents from Puerto Rico and the U.S. Virgin Islands. Additionally, ICE made payments to employees for daily *per diem* beyond what the governing evacuation regulations permitted while under evacuation orders.

This report also includes specific actions taken to improve agencywide understanding of special allowances. Lastly, a certification by the Deputy Director and Senior Official Performing the Duties of the Director of ICE provides confirmation that ICE has developed and will implement a training plan before the end of FY 2018 to strengthen internal controls.



# Hurricane Payments and Training

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# I. Legislative Requirements

This document has been compiled pursuant to a requirement in the Fiscal Year (FY) 2018 Department of Homeland Security Appropriations Act (P.L. 115-141) and its accompanying Joint Explanatory Statement.

P.L. 115-141 states:

*Provided further*, that of the amounts made available under this heading, \$5,000,000 shall be withheld from obligation until the Secretary of Homeland Security submits to the Committees on Appropriations of the Senate and the House of Representatives the report required under section 212 of this Act.

P.L. 115-141 further states:

Section 212. The Secretary of Homeland Security shall submit a report to the Committees on Appropriations of the Senate and the House of Representatives that (a) identifies any instance during fiscal year 2017 or 2018 in which payments have been made by U.S. Immigration and Customs Enforcement, or employees of U.S. Immigration and Customs Enforcement have erroneously entered into financial obligations, for activities in violation of subpart D of part 550 of title 5, Code of Federal Regulations; (b) includes specific actions the Office of the Chief Financial Officer and the Office of the Principal Legal Advisor will take to improve agencywide understanding of such subpart D; and (c) includes a certification by the Director of U.S. Immigration and Customs Enforcement that the Office of the Chief Financial Officer and the Office of the Principal Legal Advisor have developed a plan and implemented training necessary for strengthening internal controls necessary to avoid violations of such subpart D.

The Joint Explanatory Statement includes the following provision:

Section 212. The bill continues a provision requiring the submission of a report related to erroneous financial obligations by U.S. Immigration and Customs Enforcement.

## II. Background

U.S. Immigration and Customs Enforcement (ICE) employees entered into erroneous financial obligations, primarily due to the high lodging rate in the hurricane-affected Puerto Rico region. Lodging at established U.S. General Services Administration Federal Travel Regulation (FTR) *per diem* rates<sup>1</sup> was extremely difficult to obtain in the immediate aftermath of Hurricanes Irma and Maria because of low supply and a very high demand given the influx of federal, military, and commercial recovery personnel. Some ICE employees were paid 300 percent of the maximum lodging rate, which exceeded the amount authorized for subsistence expenses for special allowances. Additionally, ICE employees incurred costs and were reimbursed at the full *per diem* rate and 300 percent of the standard lodging rate 31 days after the evacuation order was given.

Authorization for exceeding the maximum lodging rate is only permissible under regulations governing temporary duty (TDY) assignments and does not apply to special allowances for evacuations. Furthermore, if an evacuation order has not been terminated, beginning on the 31st day of the evacuation order, the regulations regarding payments during an evacuation require the *per diem* rate to be reduced to 60 percent of the applicable maximum *per diem* rate. After identifying and clarifying concerns with calculating special allowances, ICE determined that some evacuees may have exceeded what was authorized statutorily. The following instances of erroneous payments were made:

**Table 1: ICE Special Allowances Payments Exceeding Regulations**

Program	Number of Employees	Total Amount
Homeland Security Investigations (HSI)	48	\$69,121.30
Enforcement and Removal Operations (ERO)	6	\$958.20
Office of the Principal Legal Advisor (OPLA)	1	\$1,660.40
<b>Total</b>	<b>55</b>	<b>\$71,739.90</b>

**Table 2: ICE Special Allowance Payments Unauthorized**

Program	Number of Employees	Total Amount
HSI	64	\$212,743.94
ERO	18	\$45,802.90
OPLA	2	\$4,065.20
<b>Total</b>	<b>84</b>	<b>\$262,612.04</b>

<sup>1</sup> See FTR § 301-11.6. For *per diem*, see applicable FTR Per Diem; actual expense is available on the Internet at <http://www.gsa.gov/perdiem> (see 41 CFR §§ 301-11.303 and 301-11.305).

ICE subsequently has worked to: 1) address any overpayments, to have the least possible impact on its employees, and 2) determine reimbursement options for expenses incurred exceeding the allowable amount.

### III. Efforts to Date

Since Hurricanes Irma and Maria, ICE has undertaken several initiatives to ensure that employees and managers better understand the differences between special allowances under an evacuation order and TDY travel allowances.

For easier accessibility, the ICE Office of the Chief Financial Officer (OCFO) also provided new and revised materials to ICE's dedicated intranet page on financial management guidance. These updated ICE OCFO materials include information clarifying the authorities for special allowances under an evacuation order and TDY travel allowances. Other materials include an employee fact sheet on special allowances under an evacuation order, clear instructions for claiming reimbursements, and certification of dependents.

ICE OPLA, in coordination with ICE OCFO and the ICE Office of Strategy, Policy, and Plans (PLCY), also have developed a handbook to provide guidance and procedures for ICE Directorates, Program Offices, and their employees affected by emergency situations. Specifically, this handbook includes guidance on evacuation benefits and critical human resource actions during an emergency (e.g., evacuation orders, evacuation-related payments and allowances, leave, and other critical areas). This handbook will accompany a new ICE Directive, which will supersede ICE Directive 2-11.0, *Emergency and Special Evacuation Allowances* (August 31, 2008).

The agency also has held multiple meetings and after-action sessions to discuss lessons learned from the past hurricane season and to implement operational best practices. The after-action sessions focused on operational impacts, and included fiscal issues during declared emergencies. Most recently, senior leadership from ICE operational programs met to discuss the operational, fiscal, and administrative impacts of operating under an evacuation order and defining clear chains of command to ensure that ICE disseminates policy and guidance in an organized manner. Annual online training for all ICE personnel regarding special allowances under an evacuation order also is available through the ICE performance and learning management system.

## IV. Implementation Plan

ICE established the following milestones to ensure that necessary internal controls are implemented to avoid future erroneous payments and to provide guidance to employees on allowances.

Milestone	Office	Product/Project	Action	Status
11/14/2017	OCFO	Blanket Authorization Approval	Completed	Blanket authorization for actual expenses for Hurricanes Harvey, Irma, and Maria
12/1/2017	OCFO; OPLA	OFMOnline Frequently Asked Questions (FAQ)	Completed	Topics included clarification on maximum <i>per diem</i> allowances
1/26/2018	OCFO	Memo to Executive Associate Directors, OPLA, and Office of Professional Responsibility	Completed	Expiration of special allowances for Hurricanes Harvey, Irma, and Maria
1/30/2018	OPLA	Field After-Action Trainings	Completed	Topics included: use of government funds, resources, and assets; and designation of safe haven and evacuation FAQs
3/8/2018	OCFO	Flowchart on Evacuation and Special Allowance Payments	Completed	Sent to mission support directors for dissemination and posted to OFMOnline
5/7/2018	OCFO; OPLA	Hurricane Payment Guidance Memo to Mission Support Directors	Completed	Guidance on subsistence and lodging expense exceptions (clarification on allowances)
7/31/2018	OCFO	Revised Travel Handbook	Completed	Special allowance section added
7/31/2018	OCFO; OPLA	Performance and Learning Management System Training	Completed	Emergency and evacuation payments
8/30/2018	OPLA	Employee Evacuation Handbook	To Be Completed	OPLA incorporating PLCY edits

In addition to these milestones, OCFO clarified allowances for dependents during evacuation and provided details for these reimbursements in the training and in the associated handbook.

## V. Certification

As shown on the following page, the ICE Deputy Director and Senior Official Performing the Duties of the Director certifies that a plan was developed and that training was implemented for strengthening internal controls necessary to avoid future erroneous payments and to provide clear guidance to employees.

## **CERTIFICATION OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HURRICANE TRAINING**

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### **I. Purpose**

This certification by the Acting Director of U.S. Immigration and Customs Enforcement (ICE) pertains to internal control improvements of the financial payments process and communications for emergency evacuations necessary to avoid violations of 5 C.F.R. Part 550, Subpart D, Payments During Evacuations.

### **II. Authorities**

Public Law 115-141, Division F, Title II, § 212(c) (2018), the Consolidated Appropriations Act, 2018.

### **III. Background**

In the aftermath of Hurricanes Harvey, Irma, and Maria between August 23, 2017 and December 1, 2017 ICE made special allowance overpayments to employees and their eligible dependents from Puerto Rico and the U.S. Virgin Islands. ICE also reimbursed employees additional expenses incurred that were not authorized under the evacuation regulations in effect at the time.

The overpayments and incurrence of excess expenses happened for two basic reasons. First, ICE initially believed that it could authorize up to 300% of the maximum lodging rate for subsistence expenses for special allowances, but such an authorization is only permissible under regulations governing temporary duty assignments and does not apply to evacuation special allowances. Second, if an evacuation order has not been terminated, beginning on the 31<sup>st</sup> day of the evacuation order, the regulations regarding payments during an evacuation require the per diem rate to be reduced to 60% of the applicable maximum per diem rate. However, some ICE employees incorrectly believed that they could continue to incur and be reimbursed at the full per diem rate and 300% of the standard lodging rate.

### **IV. Certification**

Subject to my oversight, direction, and guidance, I certify that the Office of the Chief Financial Officer and the Office of the Principal Legal Advisor have developed a plan and will implement training before the end of Fiscal Year 2018 for strengthening internal controls necessary to avoid future erroneous payments and provide clear guidance to employees to avoid future violations of 5 C.F.R. Part 550, Subpart D.



Ronald D. Vitello  
Acting Director



Date