



December 2, 2016

MEMORANDUM FOR: Ellen Herbst
Chief Financial Officer and Assistant Secretary for Administration

FROM: Andrew Katsaros
Assistant Inspector General for Audit Quality and Broadband

SUBJECT: *Biweekly Reporting on Conference Spending by the Department of Commerce*
Final Memorandum No. OIG-17-006-M

This memorandum provides the results of OIG's analysis of biweekly conference spending reports provided by the Department of Commerce (Department). It includes two recommendations to assist the Office of Administrative Programs (OAP) in managing the Department's requirement to report on conference attendance to OIG.

Background

To promote efficient spending in support of federal operations, the Office of Management and Budget (OMB) developed Memorandum M-12-12, Promoting Efficient Spending to Support Agency Operations, on May 11, 2012. Section 2 of this memorandum addresses conferences and outlines "a series of new policies and practices for conference sponsorship, hosting, and attendance to ensure that Federal funds are used appropriately on these activities, and that agencies continue to reduce spending on conferences where practicable."¹ Further, under appropriations legislation for fiscal years (FYs) 2013,² 2014,³ 2015,⁴ and 2016.⁵ Certain conference information must be reported to the Inspector General. However, neither the Consolidated Appropriations Act, 2016, nor the preceding appropriations legislation defines the term "conference."

In December 2013, the General Services Administration (GSA) released Federal Travel Regulation (FTR) GSA Bulletin FTR 14-02 (FTR Bulletin) to clarify the meaning of "conference" for purposes of the reporting requirements of the FY 2013 and FY 2014 continuing resolutions

¹ Office of Management and Budget, May 11, 2012. *Promoting Efficient Spending to Support Agency Operations*, Section 2, Memorandum M-12-12. Washington, DC: OMB.

² Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Division G, § 3003 (2013).

³ Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Division G, § 742 (2014).

⁴ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Division E, § 739 (2014).

⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division E, § 739 (2015).

and OMB Memorandum M-12-12. This strongly suggests that the FTR definition of “conference” should be used in applying requirements under the appropriations acts and OMB M-12-12.

Under the FTR Bulletin, “conference” is defined as follows: “[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term ‘conference’ also applies to training activities that are considered to be conferences under 5 CFR 410.404.”⁶ The FTR (41 C.F.R., Chapter 301, Appendix C) further provides, in part, the following guidance to help agencies distinguish between mission-related events and conferences:

- *Mission (Operational)*: Travel to a particular site in order to perform operational or managerial activities. Travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest. Examples: Employee's day-to-day operational or managerial activities, as defined by the agency, to include, but not be limited to: hearings, site visit, information meeting, inspections, audits, investigations, and examinations.
- *Special Agency Mission*: Travel to carry out a special agency mission and/or perform a task outside the agency's normal course of day-to-day business activities that is unique or distinctive. These special missions are defined by the head of agency and are normally not programmed in the agency annual funding authorization. Examples: These agency-defined special missions may include details, security missions, and agency emergency response/recovery such as civil, natural disasters, evacuation, catastrophic events, technical assistance, evaluations or assessments.
- *Conference—Other Than Training*: Travel performed in connection with a prearranged meeting, retreat, convention, seminar, or symposium for consultation or exchange of information or discussion. Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Training below). Examples: To participate in a planned program as a speaker/panelist or other form of presentation, host, planner, or others designated to oversee the conference or attendance with no formal role, or as an exhibitor.
- *Training*: Travel in conjunction with educational activities to become proficient or qualified in one or more areas of responsibility. 5 USC 4101(4) states that “‘training’ means the process of providing for and making available to an employee, and placing or enrolling the employee in a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.”
- The term “conference” may also apply to training activities that are considered to be conferences under 5 CFR 410.404, which states that “agencies may sponsor an employee's attendance at a conference as a developmental assignment under section 4110 of Title 5, U.S.C. when (a) the announced purpose of the conference is educational or instructional; (b) more than half of the time is scheduled for a planned, organized

⁶ 41 C.F.R. § 300-3.1.

exchange of information between presenters and audience which meets the definition of training in section 4101 of Title 5, U.S.C.; (c) the content of the conference is germane to improving individual and/or organizational performance; and (d) development benefits will be derived through the employee's attendance.” Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see *Conference—Other Than Training* above). Examples include job-required training, internships, Intergovernmental Personnel Act, and forums.

Using the definition above, a meeting, retreat, seminar, symposium, or event that involves attendee travel, that is not a special agency mission, and not for the purpose of agency operational or managerial activities, is considered a conference.

The Department has a Conference Policy⁷ that attempts to incorporate these distinctions in the FTR, noting in section 2.5 that “travel to a particular site in order to perform operational or managerial activities, travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest are not included in the definition of a conference for the Department.” The Conference Policy further includes two bullets providing examples of mission-related travel that would not be considered conferences. The first bullet matches the list of examples provided in the FTR as Mission (Operational) travel. The second bullet in section 2.5 of the Department’s Policy is the following:

Agency has an inherent mission to facilitate interactions and relationship building between businesses and other private sector entities, domestically, and internationally for the purpose of promoting exports and trade, such as International Buyer Program events and trade missions, for which the sole purpose of the event is to facilitate business engagement between private entities to develop export opportunities.

This example does not appear to match any of the examples provided in the FTR, and it may contradict the reporting requirements envisioned by Congress and OMB. It is unclear from what authority the above definition originates.

The Department’s Conference Policy⁸ requires bureaus to notify the Inspector General biweekly of the date, location, and number of employees attending a conference for which the net cost to the government was more than \$20,000. OIG reviewed the Department’s reported conference activity for FY 2015 and FY 2016 for all of the Department’s bureaus in developing the findings reported in this memorandum.

Findings

USPTO Is Likely Under-reporting Its FY 2016 Conference Activity to OIG

In its FY 2015 biweekly submissions to OAP, the U.S. Patent and Trademark Office (USPTO) reported a total of 36 conferences. In FY 2016, USPTO reported none.

⁷ Conference Policy, Department of Commerce, June 2014.

⁸ Conference Policy, Department of Commerce, Subsection 4.4, June 2014.

In its August 7, 2016, email to OAP explaining its interpretation of the mission-related exemption from conference reporting requirements, USPTO appears to be relying on the second bullet from the Department's policy:

As required by DOC Conference Policy, USPTO events meeting the criteria are required to be reported as conferences. Prior to June 2014, the guidance did not allow for conferences to be considered mission-related. Under the new guidance, if an event is mission-related and does not meet the definition of a conference per GSA Bulletin FTR 14-02, the agency may request approval to have the event be considered exempt from conference classification.

Nearly every event(s) (sic) held by the USPTO are in line with a core part of the mission of the USPTO, which is to help U.S. entities doing business overseas by promoting strong and balanced IP regimes around the world, and to ensure that other countries have the capacity, laws, and knowledge necessary to enforce their IP regimes. To carry out this mission, the USPTO, through its Office of Policy and International Affairs, brings together officials from foreign governments to increase awareness of the importance of Intellectual Property Rights (IPR) and to provide training and advice on how to craft and enforce strong and balanced IPR laws. The updated policy issued in June 2014 allowed for bureaus to request exemptions from conference classification; however, the USPTO only began to exercise this option in FY 2016 as we transitioned to the new reporting requirement and created a new process internally of exemption waivers prior to submission to the Department. Many, if not all, of the events reported in FY 2015 would have the same mission-related premise, but were not requested to be exempt from mission classification.

We have not encountered anything specific in the Department's conference policy that required USPTO reporting of events that have been exempted from conference classification.

OIG notes that USPTO's interpretation of the policy is overly broad and, through its application, may not be reporting conference information as envisioned by Congress or OMB. Moreover, the USPTO explanation suggests that some of its travel is for training purposes. Under the FTR Bulletin, cited above, if an employee is attending training activities that are considered to be a conference, the trip should be reported as a conference with the purpose of training.

It Is Unclear Whether the Census Bureau Is Under-reporting Its FY 2016 Conference Activity to OIG

In its FY 2015 biweekly submissions to OAP, the Census Bureau (Bureau) reported a total of 14 conferences. In FY 2016, the Bureau has reported 3.

On August 12, 2016, the Bureau's Office of the Associate Director for Administration explained in an email to OAP the reason why fewer conferences were reported in FY 2016 than in the previous fiscal year:

At the beginning of FY 2015, it reported on regional office meetings until clarification was received from the Department. In January 2015, it was determined that Department policy does not require pre-approval/exemption for the numerous meetings that were being held in regions throughout the year because they are considered Bureau employee training events.

The Bureau's explanation indicates that, upon clarification of the policy, it stopped reporting these training events. It is not clear who provided this clarification to the Bureau—and, while its explanation refers to an “opinion” to not report on similar events in FY 2016, this opinion was not provided to OIG nor was it described as a legal opinion. For additional clarification, the Bureau highlighted events it reported in FY 2015 that it would not report in FY 2016 based on the policy clarification. These individual event highlights contain very little detail (i.e., only a short description, date, location, and number of attending employees) as the Act requires only limited information be provided to OIG.

In reviewing the short descriptions of the FY 2015 events highlighted by the Bureau, we are unclear as to whether the Bureau is applying the same broad interpretation that USPTO appears to be applying. The Bureau has reported on three conferences in FY 2016 and notes that three of the conferences it reported in FY 2015 would be reported again in FY 2016, even under its new approach. It also noted that six of the events it reported to OIG in FY 2015—all noted as training events—would not have been reported in FY 2016. In its August 12, 2016 email, the Bureau did not provide details on its approach to reporting on training events to determine whether it is (a) appropriately doing so and (b) using the GSA definition of “conference” contained in FTR Bulletin. Under the FTR and FTR Bulletin, simply because the purpose for travel is training does not mean that the event is not considered a conference.

Recommendations

To assist the Office of Administrative Programs in managing the reporting process of conference planning spending requirements, we recommend that the Chief Financial Officer and Assistant Secretary for Administration do the following:

1. Provide clarification to USPTO and the Census Bureau on the types of conferences required to be reported, per OMB Memorandum M-12-12, applicable appropriations legislation, and GSA Bulletin FTR 14-02.
2. Determine whether adjustments to Section 2.5 of the Department's Conference Policy are needed to better comply with the reporting requirements of OMB Memorandum M-12-12, applicable appropriations legislation, and GSA Bulletin FTR 14-02, and adjust as needed.

The final memorandum will be posted on OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended. In accordance with Department Administrative Order 213-5, within 60 days of the date of this memorandum please provide us with an action plan that responds to all of the recommendations. If you have any further questions or comments, please contact me at (202) 482-7859 or at akatsaros@oig.doc.gov.