

**April 7, 2006**

**HHS Responses to Chairman Coburn's Questions for the Record following February 6, 2006, Hearing on Conference Spending**

**From: Charles E. Johnson, Assistant Secretary for Budget, Technology and Finance, U.S. Department of Health and Human Services**

**Question 1:** In your testimony you state that total conference spending at HHS increased 33 percent since 2000, yet the numbers you provided the Subcommittee equal a 47 percent increase. Why the discrepancy?

**Answer:** The October 4, 2005, report on total conference spending that HHS provided was based on actual cost data for fiscal years (FY) 2000-2004 and projected costs for FY 2005 before the fiscal year ended. Testimony before the Subcommittee on February 7, 2006, reflected actual FY 2005 cost data. As it turns out, the National Institutes of Health and the Administration for Children and Families had significantly overestimated conference spending. As a result, the 33 percent figure more accurately describes the increase in HHS conference spending between FY 2000 and FY 2005.

**Question 2:** Your testimony states that while the total HHS budget rose 50 percent, conference spending didn't rise at the same rate (47 percent according to the numbers provided but 33 percent according to HHS testimony). You credit this to careful stewardship and increased oversight of conference spending. Under this system, how is it that you sent money and employees to support a conference in Salt Lake City last August that had the intent of decriminalization of drugs and featured topics including, "We Don't Need a 'War' on Methamphetamine" and "You Don't Have to Be Clean & Sober. Or Even Want to Be!"

- a) The lowest estimate of the federal tax dollars spent at this conference is \$20,000, not including salaries for the federal employees who attended. Obviously the themes of this conference conflict with the Administration's policies and the sensibilities of Americans. Where was the breakdown in the vetting process that allowed these funds to be used?
- b) Was anyone punished for sending money to this conference or using the HHS logo on the conference materials, or was the only course of action, a letter sent by the Secretary?

**Answer:** A portion of CDC's cooperative agreement with Utah was used to support the conference. While Utah informed a CDC project officer that Utah and the Harm

Reduction Coalition were sponsoring the conference and shared a draft agenda with the project officer, Utah did not inform the project officer that CDC monies were being used for conference support, and the CDC project officer did not inquire about the particular source of funding for the conference. When CDC funds are used for conference support, CDC grantees are required to seek CDC's approval of conference agendas. See AR-20 at <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

In light of this, CDC responded to the issues raised by the situation by: (1) sending a letter on September 2, 2005, to all state health directors reinforcing the policies and procedures concerning the use of HIV funds for conferences; and (2) specifically addressing this issue at the September 22<sup>nd</sup> National Association of State and Territorial AIDS Directors Annual Executive Committee Meeting so that state AIDS officials can reinforce the procedures and policies concerning using HIV federal funds to support conferences.

**Question 3:** I understand that a special conference guidance was sent to senior managers at HHS on Friday, February 3, 2006. In this guidance, you make a strong point about the difference between HHS providing funding support for a conference and sponsorship, particularly with the use of HHS logos. Unfortunately, the distinction is lost on me. If a conference is worthy enough for HHS to underwrite, why would it not be worthy of HHS sponsorship, including use of the HHS logo?

- a) Why is the Department providing funding to a conference for which it would not be willing to be listed as a sponsor? I also note that you require certain disclaimers on materials for conferences that HHS supports stating that the views expressed in the conference do not represent agency views.
- b) Why would you support a conference that you could not endorse?

**Answer:** There are various types of conference support, many of which involve information and exchange for the purposes of exploration/clarification for a defined subject, problem, or area of knowledge, and others that may be limited to supporting certain aspects of a conference. In an effort to afford the broadest possibility for information gathering, data dissemination, and viewpoint sharing; at times, conferences that include various viewpoints (some of which may not be consistent with the U.S. Government) may be funded, or the content of individual conference presentations may not be known ahead of time. In some cases, Department participation in such conferences ensures that the U.S. Government's position is communicated. Because of the diversity of topics, ideas, viewpoints, and information that may be presented or exchanged during a conference, HHS Policy requires the use of a general disclaimer which may help avoid confusion in situations where certain conference materials contain specific information on percentage of costs financed with federal funds, dollar amount of federal funds

used, and the percentage and dollar amount of the total costs of the program that will be financed by non-government sources on publications that result from HHS grant-supported activities, as required by section 506 of the FY06 Appropriations Act. Further, requiring a disclaimer or controlling logo use helps to assure that the audience is not confused into believing that every utterance is an official pronouncement of the agency.

**Question 5:** Since the end of October, 2005, when Congress was informed that Secretary Leavitt "has directed Department staff to develop a uniform policy on sponsorship," how many sponsorship requests have received scrutiny under the new policies?

**Answer:** My memorandum of February 3, 2006, establishes interim uniform policy in this area by providing guidance on sponsorship, disclaimers to be included in contracts and grants, procedures for use of HHS and OPDIV logos, and controls on conference travel. And, it directs OPDIV and STAFFDIV Heads to approve these arrangements. As such, we are asking our agencies about sponsorship requests received and approved since February 3<sup>rd</sup>, and will provide that information to you.

**Question 6:** In your testimony you explain that part of the reason conference spending for National Institutes of Health increased over \$12 million over 5 years, or 50 percent, was "to assure results of ongoing and completed research were disseminated widely." Do you agree that academic journals, the internet, and teleconferencing or some other form of "E-conferencing" allow an agency to disseminate such research in a more economical manner?

**Answer:** Using all available technology will assist NIH and all agencies at HHS to better disseminate information. We continue to look at all available resources for this purpose. In many circumstances the free flow of information can only be accomplished through face-to-face interaction. Discussions and interactions with other scientists at meetings, including scientists from academia and industry, can accelerate the pace of medical discovery. These interactions foster the transfer of methods and research tools developed by NIH-supported research—research that is conducted in NIH's own laboratories, and the 80 percent of NIH research supported by grants and contracts to research institutions. NIH considers this information dissemination activity of such importance that competitive awards are made to research institutions to enable them to host conferences and facilitate the exchange of information.

The very latest research results are presented at these meetings. Most essential is the live give-and-take, which cannot be captured in print or electronic form. Questions and discussions of each presentation can reveal significant advantages or problems in a line of inquiry or an experimental approach. This

discussion often triggers thoughts of an important new direction for investigation. Most scientists say that some of their best ideas spring from presentations and discussion at meetings.

Meeting attendance can also save scientists time and resources, since some meeting presentations report small but critical refinements in methods or reveal negative results. Although these types of findings may never be published--and may only emerge during informal discussions that are never captured in print or electronically--they may greatly improve the success or efficiency of a technique or give early notice to other investigators that a particular approach to a research problem is unlikely to work.

**Question 7:** Do all posters and papers *accepted* for a conference need to be *presented* in person?

**Answer:** Not all posters and papers accepted for a conference must be presented in-person. NIH has found, however, that live, in-person presentation and discussion of posters and papers is critical for the essential scientific give-and-take that leads to research advances and strengthening of the NIH mission—to uncover new knowledge that will lead to better health for everyone. It also plays an important role in the general support of the Nation's scientific community, contributing to research excellence and competitiveness.

Those who present papers at scientific meetings benefit from critical feedback during the discussion of their results by investigators from other labs. This free, informal collegial advice --which is unlikely ever to be offered via recorded media -- can help scientific investigators refine and improve the research far more efficiently and effectively than would be possible within their own labs. It can also lead to the development of collaborations with scientists at other research institutions. Senior investigators at NIH say that the vast majority of their collaborations with other scientists are first established at professional meetings.

For extramural program scientific managers, assessing leadership and standing of large numbers of scientists in a field is important to assembling and running a scientific review group that will evaluate the quality of grant applications, and ultimately determine the direction the entire field will take.

**Question 8:** While I can understand that you might send participants to a conference to provide alternative viewpoints, in your testimony you state that actual funding for a conference does not translate into an endorsement of the conference themes. Why would an agency, or individual for that matter, send money and support to an event they would not endorse or agree with?

**Answer:** There are various types of conferences, many of which involve information and exchange for the purposes of exploration/clarification for a defined subject problem or area of knowledge. In an effort to afford the broadest possibility for information gathering, data dissemination, and viewpoint sharing; conference grants may be funded that have various viewpoints (some of which may not be consistent with the U.S. Government). There are also situations in which the Department does not have control over the conference agenda and is, therefore, wary of sponsorship, for example, if the Department is not the sole funding mechanism or is only attending the conference to staff a booth. In addition, conferences may have different funding streams for different portions of the event. While the Department may support a portion of the conference, that does not necessarily implicate sponsorship of the entire event. Further, there are various ways in which the Department provides conference support, such as exhibit booths and speakers, neither of which necessarily amounts to conference sponsorship.

**Question 9:** You outline a justification, review and approval process in place at the agency for foreign travel where employees submit destination, trip justification, cost and funding source. Do you consider the number of employees requesting to attend a single conference? In 2004, you sent delegations of over 100 people to at least 59 conferences.

- a) How can HHS can send 236 people to Barcelona, or over 1,000 people to Orlando for a single conference and claim that oversight has been performed? How does that happen, are reviews and approval conducted in a vacuum?

**Answer:** My memorandum of February 3, 2006, addresses our new requirements for justification, review and approval of domestic travel as follows:

“The HHS review process required that requests for domestic travel for groups of 20 or more employees, and for trips whose costs exceed \$2,500 for one individual, be submitted (by the Operating Division Head or designee(s)) to ASAM (Assistant Secretary for Administration and Management) for review. In addition, effective immediately any domestic travel for groups of five through 19 employees must be submitted to the OPDIV/STAFFDIV Head or designee(s) for approval. While awaiting formal issuance of revised Departmental travel policies, OPDIVs/STAFFDIVs should adhere to these revised travel policies.”

**Question 10:** Do you agree that sending 50 people from the same agency to one conference is hard to justify, especially when teleconferencing and other forms of “E-conferencing” and the Internet offer economic ways to exchange slides, reports, and so on?

**Answer:** There are times where sending 50 people or more is done because of different disciplines and the need to provide feedback to a large number of HHS employees who do not attend in person. This leveraging process is based upon a thoughtful decision. Good communication to disseminate and share information is a key to HHS' success, and conferences can be a cost-effective way for HHS to communicate with many stakeholders at one time. Appropriate conferences play a major role in facilitating this communication with and between grantees on policies, goals, best practices and new discoveries. HHS has a large and diverse group of grantees, and their ability to connect with us through "E-conferencing" methods can be rather limited, so it is often necessary to meet with grantees face-to-face.

HHS has expanded the internal controls over conference funding to ensure that such use effectively and efficiently furthers the agencies missions. HHS internal controls require that both the agency head and senior Department management approve travel for conference attendance by 20 or more people within the same agency. These controls are designed to ensure that the use of funds for conference support reflects a considered judgment that supporting/attending a conference is a cost-effective approach to furthering the goals for which funds are appropriated. With this process in place, you can be assured that any conference with 50 or more attendees from the same agency will have gone through a case-by-case review to ensure that this was an effective and efficient use of taxpayer funds to further HHS' mission and goals.

**Question 11:** I understand it is HHS's policy that no one travels in First Class. Are conference costs built into grants? Grantees travel to conferences on the Department's dime and there are reports of grantees sitting in First Class while Secretary Tommy Thompson was seated in the coach section. They were all going to the same conference.

- a) Do you require grantees who travel on funds provided by their HHS grant, contract or cooperative agreement to follow the same travel guidelines as HHS employees?

**Answer:** No. Grantees are subject to the OMB Cost Principle Circular that is applicable to their type of organization. Travel costs pertaining to: Non-profit organizations is located at OMB A-122 Attachment B, 51; Colleges and Universities is located at OMB A-21 Attachment J, 53; and States, Local Governments and Indian Tribes is located at OMB A-87, Attachment B, 43. However, the language between the three OMB circulars that discusses those instances where travel in other than coach class is permitted is very similar and states:

- c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

- (a) require circuitous routing;
- (b) require travel during unreasonable hours;
- (c) excessively prolong travel;
- (d) result in additional costs that would offset the transportation savings; or
- (e) offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a organization's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the organization can demonstrate either of the following: (a) that such airfare was not available in the specific case; or (b) that it is the organization's overall practice to make routine use of such airfare.

- d. Air travel by other than commercial carrier. Costs of travel by an organizationally -owned, -leased, or - chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection c., is unallowable.

**Question 12:** Your special conference guidance of February 3, 2006 suggests that conference sponsorship decisions must be made so as not to "run afoul of lobbying prohibitions." Can you elaborate what that means? Are there a lot of conferences during which serious advocacy takes place? Would you consider protests of the Secretary to be advocacy or lobbying?

- a) Your guidance also requires that sponsorship not run afoul of supporting unallowable costs. I understand that food and drinks are unallowable uses of Federal funds. How do you know that conference support provided by the Department is not supporting meal-time events involving food and drink purchasing?
- b) Your guidance reminds managers that the Office of the Inspector General has the authority to impose civil monetary penalties on any entity that uses an HHS logo without authorization. Have you ever imposed such penalties? Why did you not impose these penalties on the organizers of the drug legalization conference in Salt Lake City?

**Answer:** Our contracts and grants comply with 31 U.S.C. §1352 and prohibit recipients of a Federal contact, grant, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence a Member of Congress and that the purpose of mentioning this in the 2/3/06 memo is to remind conference sponsors that it is their responsibility to insure that contractors and grantees understand the rules which relate to transactions covered under this section.

In addition, in OMB A-21 Attachment J, 32; OMB A-122 Attachment B, 29; and OMB A-87 Attachment B, 27, the language is similar between the three OMB circulars:

**Meetings and conferences.** Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see Attachment B, section 14, Entertainment costs.

Under Section 1140 of the Social Security Act (42 U.S.C. § 1320b-10), the Office of the Inspector General (OIG) may impose civil monetary penalties of up to \$5,000 per misrepresentation against anyone who uses various specified words, letters, and symbols, such as "Health and Human Services," "Medicare" or "CMS," or the symbols or logos of those agencies, to convey the false impression that they are approved, endorsed, or authorized by the agencies. The OIG has proposed penalties against a variety of entities for such misleading marketing practices. As examples, the OIG proposed penalties against a major drug company, cautioning them about their use of "Medicare-endorsed" in their discount drug card. The OIG also issued a warning to a company that published a magazine entitled "U.S. Department of Health and Human Services: 50 Years of Service." The publication, which included numerous glossy pharmaceutical ads, was not approved or endorsed by HHS despite the use of the HHS logo and other devices to create the impression it was an HHS publication. We are advised by OIG that companies often cease their practices upon receipt of a "cease and desist" letter from the OIG.

The OIG also advises that they have received no information of potential misuse of names and symbols in violation of Section 1140 in connection with the drug legalization conference in Salt Lake City. If you or your staff have specific information relating to such a potential violation, please forward it directly to the Inspector General.

**Question 13:** At this time when our nation has a \$8.1 trillion debt, we are fighting a global war on terror, we are recovering from the most expensive natural disaster in our nation's history and we are confronted with emerging threats such as bioterrorism and avian flu, would you agree that efforts are needed to reduce non-essential spending?

**Answer:** We agree that it is essential to target funding to areas that provide the highest return to the American public. With current tight budgets, all of our agency heads and senior managers are working to ensure the best use of funds. With respect to conferences, the administrative process we have put in place is designed to ensure that the use of funds for conference support reflects a considered judgment that supporting/attending a conference is a cost-effective approach to furthering the goals for which funds are appropriated.

**Question 14:** You indicated willingness or desire to restrict travel and conference costs. Would you be willing to work with my office this year to write into law some commonsense rules to govern conference, travel and meeting expenses as part of the appropriations process?

- a) Planning any event, especially a large conference, must distract numerous employees for many months to orchestrate the meeting. Do conferences actually have an unintended consequence of siphoning away resources and staff time?
- b) Is this cost effective use of staff time and resources?

**Answer:** We believe the administrative oversight process we have put in place is a better solution than targeted legislation. We should then be accountable for our results. The Department has a wide variety of programs, and a wide variety of non-Federal program partners who are responsible for ground-level implementation of those programs. The administrative process we have put in place is designed to ensure that the use of funds for conference support reflects a considered judgment that supporting/attending a conference is a cost-effective approach to furthering the goals for which funds are appropriated. It would be difficult, if not impossible, to craft legislation that could replicate the case-by-case judgment of the Department's agency heads and senior managers.

Staff, like funding, represent a valuable resource that need to be utilized to provide the best return to the American public. When an agency head decides to support a conference, I expect him or her to consider costs in staff time as well as dollars. It should be noted, however, that when a grant or contract is issued to support a conference, much of the coordination work is carried out by the contractor or grantee.

**Question 15:** Has your department and its agencies purchased equipment to allow teleconferencing?

- a) Could you, in follow-up, provide a line itemed and detailed listing of that equipment and the amounts spent for it?
- b) What impact-- if any-- has the purchase of this technology had on the number of employees traveling to meetings and the amount spent on conferences?

**Answer:** HHS has a long history of using these methods for internal meetings and discussions with a range of partners. The Department encourages agencies to use teleconference technology and looks forward to future improvements in disseminating information to maximize the benefits available from communications technology. For example, the Office of Medicare Hearings and Appeals uses teleconferences as the standard for meetings with appellants. We are in the process of gathering information on the capacity for and use of web-casting and videoconferencing, I would like to focus staff time and attention forward as much as possible. Your requests ask for a detailed listing of equipment and amounts spent.

This would require a substantial redirection of staff time across the Department to collect detailed information on equipment inventories and systematically link that to the impact of those inventories on travel to meetings. I am requesting an inventory of our existing capability to use web-casting and video conferencing. This will establish a basis for our capacity to use technology in the future and a basis to determine if further capacity is needed. I hope this meets the intent of your request without producing a detailed listing of past purchases.

**Question 16:** Have you considered reimbursing employees for incidentals instead of issuing per diems as a way to cut costs? Per diems allow staff to actually make money from official travel.

- a) When issuing per diems does anyone consider that a majority of the meals are often included in the conference fees?

**Answer:** The Department of Health and Human Services requires compliance with the Federal Travel Regulation (FTR) 301-74.21, when meals are furnished by the Department or are included in the registration fee the applicable M&IE rate is reduced in accordance with the FTR 301-11.18. If all meals are provided, the employee's reimbursement is limited to the incidental expense only. If light refreshments are furnished then no deduction in the M&IE allowance is required.