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Source of document: FOIA Request
Department of the Treasury
Washington, DC 20220
Fax: 202-622-3895
FOIA Online Request Form

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From: "Delmar, Richard K."
Date: Dec 19, 2013 12:03:08 PM
Subject: Your FOIA request to Treasury OIG

This responds to your 12/3/13 FOIA request for copies of "each Department of the Treasury Inspector General final report/closing memo/referral letter, etc. (e.g., of an investigation or audit or management review or inspection of any other project) done for a different agency (i.e., an agency other than the Treasury Dept.)"

You excepted from the scope of your request any records created before January 1, 2005, any records already on our web site, and peer review documents. The Department has docketed this request with the tracking number 2013-12-051.

I have reviewed our record systems, and have discussed your request with responsible supervisors in our Office of Audit (OA) and Office of Investigation (OI). I have also reviewed Office of Counsel (OC) files.

Nothing produced by OA or OI is responsive to your request.

But there are reports made by OC that are responsive. Two such reports, involving responses to information requests made by Senator Grassley, are on our web site. One involved the development of an IRS tax notice, and the other involved the process by which certain FOIA requests were reviewed within the Department.

The other two reports, which are not on our web site, are attached. The first was a response to another Senator Grassley inquiry, involving AIG's payment of certain employees. That report was in the form of a letter I sent to a member of Senator Grassley's staff. The second was the IG's response to Rep. Jo Ann Emerson's inquiry about a Treasury social media publication, and its possible violation of Federal anti-lobbying laws.

With the provision of those two documents, I believe I have fully complied with your request, and provided all responsive records created and maintained by the Treasury OIG. If you disagree with this resolution of your FOIA request, you can appeal the matter pursuant to 5 U.S.C. section 552(a)(6)(A)(i). Pursuant to the Department's FOIA appeal process set forth in 31 C.F.R. section 1.5(i), an appeal must be submitted within 35 days from the date of this response to your request, signed by you and addressed to: Freedom of Information Act Appeal, DO, Disclosure Services, Department of the Treasury, Washington, D.C. 20020. The appeal should reasonably describe your basis for believing that Treasury OIG possesses records to which access has been wrongly denied, or that we have otherwise violated applicable FOIA law or policy.

Rich Delmar
Counsel to the Inspector General
Department of the Treasury

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
INSPECTOR GENERAL

September 29, 2009

Ms. Emilia DiSanto
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ms. DiSanto:

At the request of Senator Grassley, the Treasury Office of Inspector General (TIG) is conducting an inquiry into the role of officials of the Treasury Department in reviewing the process by which certain employees of American International Group's Financial Products division (AIG-FP) received incentive payments earlier this year. As we discussed, one of the issues of interest is the role of Treasury's Office of General Counsel in reviewing the legal arguments that were advanced that these payments were mandated by contract.

I have talked with Steve Albrecht, who was the OGC official most involved with monitoring events. He related that the OGC adopted the conclusions in the law firms' opinion letters, and advised Treasury officials that, in fact, relevant state contract and employment law did require that AIG-FP make the retention bonus payments called for in the contracts.

Mr. Albrecht is the Counselor to the General Counsel, the position he has held since he started at OGC in 2007. He was assigned special projects, managed the OGC Front Office, was responsible for OGC budgeting, as well as being involved in hiring and other human resources responsibilities.

He stated that he first worked on the issue of AIG's employee bonus contracts, the AIG Employee Retention Plan (ERP) in October 2008, when Treasury first became an investor in AIG. Then-General Counsel Robert Hoyt tasked him to become involved. He monitored developments, and facilitated communication among persons at Treasury, the Federal Reserve Bank of New York, AIG itself, and others.

Primarily he was tasked with obtaining information about the particulars of AIG's contracts with its employees to make retention payments. As the government's control of AIG had increased (the Federal Reserve had appointed trustees to manage and control its 79.9% ownership of AIG), there was a basic concern that the company not be forced to break contractual commitments. He explained that Treasury and the Fed did not want even a perception that joining the TARP's Capital Purchase Program could result in a financial institution having to break a contract; clearly this would be a disincentive to participation. It was crucial that entities dealing with AIG, such as counterparties, be certain that it was a stable partner that paid its debts and would not change the rules in the middle of the game. Thus it was vital to understand what AIG's commitments did and did not require.

The New York Fed had entered into an arrangement whereby an outside law firm, Davis, Polk & Wardwell (Davis Polk), would provide advice on the terms and requirements of AIG's contracts in this area. When Treasury became a participant in the financial support of AIG in late Fall, 2008, it became a party to this arrangement, and a recipient of Davis Polk's advice. Enclosure 1 is a copy of a letter dated November 4, 2008 to Mr. Albrecht from a Davis Polk partner, specifying that Treasury would not be billed for the firm's services; rather the costs would be billed and paid pursuant to the firm's arrangement with the New York Fed. Mr. Albrecht explained that AIG had previously agreed to pay the firm's fees for providing advice to the New York Fed, and by this letter the arrangement was extended to Treasury. When asked about the propriety of having legal advice paid for by an entity that was funded by, subject to supervision and oversight by, and potentially in an adversarial relationship with the New York Fed and Treasury, Mr. Albrecht indicated that this was not an uncommon arrangement in commercial dealings. It does appear that when all parties are fully aware of and consent to such arrangements, they are consistent with rules of professional conduct.

Mr. Albrecht stated that on March 10, 2009 he participated in a telephone conference call with representatives of Davis Polk, as well as officials of the New York Fed and the Federal Reserve Board. Davis Polk restated advice it had previously provided to the New York Fed to the effect that the retention payment contract was governed by Connecticut law and was binding. Mr. Albrecht said that he did not know if Davis Polk's advice was ever committed to a formal written opinion. A few days later in another call, a Davis Polk partner reaffirmed that the contracts were binding, but then noted that he had not yet considered the litigation options and risks if the contracts were not honored. Mr. Albrecht's stated that he became concerned because this was not the way the government wanted events to go; that what he viewed as a "scorched earth" policy would drive out the very employees whose retention was vital to finish AIG's work in an orderly way.

In addition to the advice from Davis Polk, another firm, Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings") represented AIG. In a letter written on AIG's behalf on March 16, 2009, to the New York Fed's General Counsel (Enclosure 2), it related its opinion that the ERP was a valid and enforceable contract, with no basis to argue otherwise, and that failure to abide by its terms would expose AIG and its Financial Products subsidiary to significant damages under Connecticut law.

This input from two well-known law firms confirmed the position taken by AIG itself, exemplified by the March 14, 2009 letter from Chairman and CEO, Edward M. Liddy, to Secretary Geithner. The letter and accompanying white paper (Enclosure 3) laid out the legal and practical reasons why AIG claimed to be bound to make previously-contracted retention payments.

Based on this confluence of legal research and advice, Mr. Albrecht indicated that the OGC advised Treasury officials, including Secretary Geithner, that the AIG bonuses had to be paid, consistent with law. When asked if OGC had conducted its own, independent research on this issue, Mr. Albrecht stated that it had not, given the time crunch they were under in mid-March to determine what the government's policy should be and to assure that AIG stayed viable and was able to carry out its functions.

The conclusion reached by AIG, the law firms, and Treasury OGC has been widely questioned and criticized. Enclosure 4 is an excerpt from a contemporaneous CNN article quoting, among others, Professor Elizabeth Warren, Chair of the Congressional Oversight Panel. Enlcosure 5 is a contemporaneous article from the Hartford Courant quoting several attorneys and state officials to the same effect.

Several state attorneys general also questioned the legal conclusions. For example, the Connecticut Attorney General's Office issued several statements which disagreed with the argument that applicable Connecticut labor and contract law would require this result (Enclosure 6). I contacted that office, and spoke to the attorney assigned to the matter, Associate Attorney General Joe Rubin. He informed me that after obtaining information from AIG, he believes that their reading of Connecticut labor law is wrong, but sees no means or basis to undo the action or take any other step to refute it. He did say that the state legislature's joint banking committee might consider changes to the law to change or clarify that it does not compel the result that occurred here.

The New Jersey Attorney General, on behalf of her office and several other states' attorneys general, announced an effort to explore the issue. I have tried to get updates, with no success yet. I will keep you advised of any developments.

I also asked Mr. Albrecht about Section 7001 of Public Law 111-5, the American Recovery and Reinvestment Act, which amends Section 111 of the EESA by exempting from otherwise-applicable limitations compensation contracts signed before February 11, 2009. There has been reportage and speculation that this provision, new § 111(b)(3)(D)(iii), popularly known as the "Dodd Amendment," had been added by Senate Banking Committee Chairman Dodd at the request of unnamed Treasury officials. Mr. Albrecht had discussions with committee staffers as the bill was being worked up, but stated that he did not request that such an amendment be offered. He was aware that several legislative proposals intended to "get tough" with excessive executive compensation were being developed and considered, but this one was not initiated by Treasury.

Mr. Albrecht did say, however, that Treasury was concerned about legislation disrupting or nullifying arrangements that had already been negotiated, promised, or otherwise set in place. The compensation limits being considered in the legislative process could be at odds with Treasury's goal of certainty in the industry. While he did not perform in-depth research, Mr. Albrecht believed that such disruption or nullification of existing agreements could constitute a taking that could be litigated, to the government's detriment, by affected employees. During the second week of February, 2009, in the final days leading up to consideration and passage of the legislation (which became law as Pub. L. 111-5 on February 17, 2009), he participated in a conference call with staffers from the Banking Committee, in which he was told by un-identified staffers that a "grandfather" provision, exempting contracts entered into before February 11, had been agreed to, and would be part of the legislation.

I'd be happy to further explore these matters with you. Please call me on 202-927-3973 (desk) or 202-528-8997 (cell) to discuss.

Sincerely,

Rich Delmar
Counsel to the Inspector General

Enclosures

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF
INSPECTOR GENERAL

September 19, 2012

The Honorable Jo Ann Emerson
Chairwoman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515-6015

Dear Chairwoman Emerson:

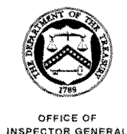
By letter dated July 19, 2012, you asked that I look into the Treasury Department's media outreach entitled "Penny Wise and Pound Foolish," which commented on pending appropriations for the Securities and Exchange Commission and the Commodities Futures Trading Commission. You provided a series of specific questions and issues to be addressed relating to this outreach, and whether it conformed to, or violated, the anti-lobbying provisions of 18 U.S.C. Section 1913 and Sections 716 and 719 of the 2012 Appropriations Act.

I tasked my Counsel, Rich Delmar, to conduct this inquiry. He met with several officials in the Treasury Department, and reviewed records and applicable law and other guidance. His report (enclosed) presents the results of his inquiry, research, and analysis. We believe that the outreach in question did not violate the anti-lobbying provisions. We also note that the Department's process for ensuring legal review of such outreach efforts is less formal and structured than might be expected.

If you have questions about our report, please call me on 202-622-1090, or your staff can contact Mr. Delmar on 202-927-3973 or delmarr@oig.treas.gov.

Sincerely,

Eric M. Thorson
Inspector General



OFFICE OF INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 17, 2012

MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: Rich Delmar
Counsel

SUBJECT Report for Rep. Emerson Re Treasury Public Outreach

BACKGROUND

By letter dated July 19, 2012 Representative Jo Ann Emerson, Chair of the Subcommittee on Financial Services and General Government of the House Appropriations Committee asked you to conduct an inquiry regarding the Department's July 16, 2012 website posting entitled "Penny Wise and Pound Foolish," which expressed the Department's views on funding levels for two non-Treasury agencies, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). You replied on July 20, 2012 stating that you were directing Counsel to carry out this inquiry.

Ms. Emerson expressed concern that the Department's outreach may have violated statutory prohibitions and limitations on using appropriated funds to lobby Congress and otherwise advocate for legislative action. She presented a list of specific questions about process, coordination and review within the Department.

I have reviewed the statutory provisions, as well as analyses and interpretations of them. I also interviewed Departmental officials with knowledge of and responsibility for the posting, and adherence to the legal constraints. Based on this review and activity, I conclude that the outreach at issue does not violate the applicable law. Additionally, there is a process in place, more informal than might be expected, that appears to satisfactorily vet outreach materials to assure that they do not violate the statutory provisions.

The applicable statutory regime consists of a Federal criminal provision, and a restriction incorporated in the current appropriation act. The criminal provision, 18 U.S.C. § 1913 Lobbying with appropriated moneys, states:

> No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

The appropriation restrictions are found in Sections 716 and 719 of Public Law 112-74, the Consolidated Appropriations Act, 2012, which state:

> GENERAL PROVISIONS--GOVERNMENT-WIDE
> Departments, Agencies, and Corporations
> Sec. 716. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.
>
> Sec. 719. No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

Then-General Counsel Madison issued a memo in September 2009 to provide guidance on the Congressional lobbying ban. In essence, it states that it is "clearly permissible" to make "public statements explaining Treasury programs, even if there is proposed or pending legislation concerning those programs," and that it is "clearly prohibited" to make "communications urging citizens to contact Congress to support or oppose pending legislation."

This guidance is available on the Department's internal website, DONET, as well as in the Ethics Handbook issued by the General Counsel's office. I've compared it to the formal guidance binding on the Executive Branch issued by the DOJ Office of Legal Counsel, and believe that it is consistent. Applying this guidance to the outreach material at issue here, I believe that Treasury acted within the statutory constraints, and that the "Penny Wise" outreach is appropriately viewed as an explanation of Treasury's programs and position regarding legislation concerning those programs.

INQUIRY PROCESS

I obtained information and records from the following Treasury officials:

Assistant Secretary for Public Affairs Jenni LeCompte;

Assistant Secretary for Legislative Affairs Alistair Fitzpayne and his deputy, Lisa Pena;

Deputy Assistant Secretary for the Financial Stability Oversight Council Amais Gerety;

Assistant General Counsel Rochelle Granat and her deputy Brian Sonfield, and

Treasury OGC attorney Steve Laughton.

From my interviews of them and review of emails and other records they provided, I am setting out answers below to the questions posed by Chairwoman Emerson. After that presentation, I will set out my conclusions and observations about this event, and the process at issue here.

The questions posed by the Chairwoman are:

Does the Department of Treasury have a well-documented and long-standing history of reviewing and critiquing the funding levels of non-Treasury agencies in appropriations legislation pending before Congress?

> Both Ms. LeCompte and Mr. Fitzpayne, the heads, respectively, of the Department's Offices of Public Affairs and Legislative Affairs, stated that in matters related to financial regulation, the Department does have a policy and practice on commenting on issues that can affect the strength and security of markets and financial institutions. This is particularly true regarding adequate funding of agencies involved in Dodd-Frank implementation and regulation of financial markets.
>
> Mr. Gerety, the Deputy Assistant Secretary responsible for administration and support of the Financial Stability Oversight Council (FSOC) agreed.

If so, which non-Treasury agencies does the Department review either regularly or occasionally?

> As discussed above, the three officials indicated that to their knowledge, the review related just to agencies involved in financial regulation, that were Treasury's partners in Dodd-Frank implementation.

How does the Department decide which non-Treasury agencies to review and not review?

> As discussed above, the decision-making focusses on how the other agencies are connected to a Treasury responsibility or core interest; in this case, financial regulation and Dodd-Frank implementation.

What Department offices are responsible for this review?

> Ms. LeCompte denied direct knowledge, saying that this is not Public Affairs's decision to make. Mr. Fitzpayne stated that he thought that the offices of the Under Secretary for Domestic Finance and the Assistant Secretary for Economic Policy would be involved in particular cases, but that the main players would be his office, and the Office of General Counsel. Mr. Gerety, interestingly, opined that "review" is too formal a term: he characterized it as a process for soliciting and sharing views and concerns about matters affecting Treasury and its missions; a process led by the Office of Legislative Affairs, with input from the Offices of Public Affairs and Domestic Finance. Any output of this process that relates to legislative proposals or actions is reviewed by the Office of General Counsel...

How widely does the Department share its review? Is the review shared just within Treasury or is it shared with the non-Treasury agencies, the Office of Management and Budget (OMB), the White House, the Congress, the media, or the public?

> Mr. Fitzpayne denied that what is done at Treasury constitutes a formal review of other agencies. Rather, particular events or concerns lead to certain activities. In this case, the second anniversary of the enactment of Dodd-Frank was coming up and there was concern about getting information out to the public about Treasury's efforts to implement the law's provisions. As noted above, Treasury had concerns that other agencies whose work intersects with Treasury's, in this case the SEC and CFTC, were not receiving resources sufficient, in Treasury's view, to carry out their responsibilities under Dodd-Frank.
>
> The Office of Management and Budget is always made aware of such activities, as are the other agencies affected.

What is the format of these reviews other than responses to OMB Legislative Reference Memorandums?

> Mr. Fitzpayne said that there is no fixed format, and that the "Penny Wise" outreach was a proactive Treasury effort to advance the goal of effective implementation of the Dodd-Frank law's changes. It was not a response to an OMB call for analysis.

Does the Department of Treasury have clear and meaningful written policies and procedures for the use of new media?

> Ms. LeCompte stated that the Office of Management and Budget has issued government-wide guidance regarding the appropriate use of social media, and Treasury adheres to those directives. In addition, the Treasury ethics manual includes guidance on the use of social media in compliance with the Hatch Act. She said that her office has also disseminated general "rules of the road" on personal use of social media by Treasury staff.

In general, she stated, the clearance of content for distribution via social media channels is the same for other content disseminated by Public Affairs – press releases, fact sheets, speech text, etc. – which includes review by all relevant internal offices, including the Office of the General Counsel.

If so, were they followed in this particular instance on July 16?

Ms. LeCompte said that the procedures described above were followed. The "Penny Wise and Pound Foolish" infographic was reviewed by relevant offices within the Department, and its content was checked for accuracy with the SEC and CFTC. OGC reviewed the product to assure that it did not cross any lines into improper lobbying, violations of 18 U.S.C. § 1913, or violations of relevant restrictions contained in appropriations acts

What Department offices are responsible for writing and enforcing these policies and procedures?

Ms. LeCompte stated that Public Affairs has responsibility for ensuring that all relevant offices have reviewed the material that is publically released. Her office looks to the Office of the General Counsel to ensure content is compliant with all laws and ethics policies.

Do the policies and procedures incorporate guidance on how to avoid violating 18 U.S.C. 1913 and sections 716 and 719 of the Financial Services and General Government (FSGG) bill?

Ms. LeCompte stated that she looks to the Office of the General Counsel to identify any legal concerns. OGC is a critical part of our content review process for this reason.

Does the Department of Treasury have a process for reviewing and preventing violations of 18 U.S.C. 1913 and sections 716 and 719?

Ms. LeCompte said that the Office of Public Affairs looks to the Office of the General Counsel to identify any legal concerns. In this case, she said that the "Penny Wise" infographic was shared with OGC for review.

Mr. Gerety, the DAS responsible for the operation of FSOC, said that in the over 3 years he's worked at Treasury, he's received repeated guidance, through exposure to OGC's in-person and written ethics and standards of conduct training, and in discussions with Legislative Affairs and OGC personnel on the rules of engagement regarding advocacy to and about Congress and legislation, in particular advice on what actions are allowed, and which are not, regarding contacts with Members, staff, and other entities. He characterized the level of guidance provided as "culturally ingrained."

Lastly, Mr. Fitzpayne said that there is not a formal process, but that he and his shop are well aware of the applicable law and its limitation on advocacy and "grass roots" lobbying efforts. He said that his shop is aware that the audience for outreach campaigns, like "Penny Wise," can include Congress, and that they're "on guard" against possible appearances of prohibited lobbying and "propaganda." He specifically mentioned Mr. Madison's 2009 memo as the guidance on what is, and is not, allowed.

Does the Department of Treasury have clear and meaningful written policies and procedures for communicating with Congressional Members and Committees?

Ms. LeCompte's response to this question was that Public Affairs is not responsible for policies and procedures for communicating with Congressional Members and Committees. Legislative Affairs takes the lead on those matters.

Mr. Fitzpayne referred to the 2009 OGC memo, noting that it was circulated, is available on DONET, and is referenced in the OGC Ethics Handbook. He did add that there is no Legislative Affairs-generated formal memo or other guidance analogous to the 2009 OGC memo.

If so, were they followed in this particular instance on July 16?

Ms. LeCompte stated that the "Penny Wise" infographic was reviewed by all relevant offices, including OGC. She said that she relied on her understanding that staff in the General Counsel's office reviewed this document, and they did not raise any concerns about its content.

Mr. Fitzpayne incorporated his response to the previous question.

What Department offices are responsible for writing and enforcing these policies and procedures?

Ms. LeCompte's view was that Public Affairs is not responsible for policies and procedures for communicating with Congressional Members and Committees. She stated her belief that Legislative Affairs takes the lead on those matters.

Mr. Fitzpayne of Legislative Affairs indicated that the Office of General Counsel is the responsible function. I agree; it is OGC that provides the guidance, and is consulted before material is published. However, as noted below, this process is less formal and perhaps less all-inclusive that might be expected.

Do the policies and procedures incorporate guidance on how to avoid violating 18 U.S.C. 1913 and sections 716 and 719 of the FSGG bill?

Mr. Fitzpayne categorically stated that OGC is always part of the clearance process for all policy statements generated by the Department.

Do these policies and procedures include how to communicate with Congressional Members and Committees using new media?

Ms. LeCompte stated that this is not Public Affairs's responsibility. Mr. Fitzpayne, however, stated that it is the responsibility of Public Affairs.

What was the purpose of the July 16 tweet, Facebook post, and blog post?

Ms. LeCompte stated that Public Affairs published this infographic as part of a broader outreach effort centered around the second anniversary of the enactment of the Dodd-Frank Act. The emphasis was on educating the public on the need and value of adequate support for the Act's implementation and enforcement, including adequate funding for agencies with responsibilities in that area.

Both Mr. Fitzpayne, and Mr. Gerety of the FSOC office agreed that this was the purpose.

Was the purpose accomplished?

Ms. LeCompte stated that she believes it was a successful communications endeavor. Openness, transparency and public dialogue are all important on these matters and promoting those objectives is in and of itself a success for good government.

Both Mr. Fitzpayne and Mr. Gerety agreed with this assessment.

If so, what performance measures does the Department have to evaluate communications?

Ms. LeCompte said that Public Affairs does not have a formal system of measures as this is not an area of clear science. She said, however, that media pick up of these postings, and that her office uses Google Analytics and other data to track hits or views on various social media platforms, which does help in evaluating the reach achieved around any particular communication.

Was the purpose to communicate with Congressional Members and Committees?

Ms. LeCompte said that public outreach is designed to communicate the Department's concerns and goals to as many people and groups as possible, to enhance citizen awareness and advance the ideas that the Administration thinks are important.

Mr. Fitzpayne, in charge of Legislative Affairs, said that communication with Congress is part of the goal of communicating to a broad audience.

If so, was it designed, directly or indirectly, to influence how Members would consider bills introduced by the House Committee on Appropriations?

Ms. LeCompte said that "Penny Wise" was published to make clear what the Department and the Administration believe and want to achieve. She specifically said that "If those positions/arguments are persuasive to Members, we would of course see that as a positive outcome."

Mr. Fitzpayne said that there is no specific intent to pressure or influence members of Congress to vote in a particular way; rather the goal is to inform as many people as possible about Treasury's viewpoint.

Why were a tweet and posts considered better forms of communication than a letter, telephone call, or meeting?

Ms. LeCompte said that her office previously communicated this message through a variety of different means, including interviews and public remarks by senior Treasury officials as well as meetings and other direct conversations. In this instance, they intended this communication for a broad public audience, making publicly accessible platforms such as the Department's blog and Twitter the most effective vehicles to achieve their objective.

Both Mr. Fitzpayne and Mr. Gerety questioned the premise of this question. Mr. Gerety said that to his knowledge many communication vehicles were used a part of an overall effort to raise public awareness of the need for support of Dodd-Frank implementation and enforcement. Mr. Fitzpayne specifically deferred to Ms. LeCompte as the responsible official. He did note that the Department uses other media, such as calls, memos and other print material, as well as meetings, in order to convey its messages.

Were alternative forms of communication considered?

All three officials referred to their answers to the previous question.

Was the purpose to communicate with the public?

All three agreed that this was the purpose.

If so, was it designed, directly or indirectly, to influence how the public would consider bills introduced by the House Committee on Appropriations?

Ms. LeCompte said that it was intended to communicate views about these proposed funding cuts to as broad an audience as possible. She specifically said that the hope is to persuade the public about the merits of those views.

Mr. Fitzpayne again said that Congress is part of the large audience being sought, although there is no intent to convince or pressure members to vote in a particular way on a particular matter.

Was the purpose to communicate the Department's views or was it to communicate the White House's or the Financial Stability Oversight Committee's (FSOC) views?

Ms. LeCompte said that "Penny Wise" was published to communicate the Department's positions on issues, which are consistent with, and supportive of,

the Administration's policies and priorities. She said that it was also meant to communicate the views of the Secretary as chair of the FSOC.

Mr. Fitzpayne thought it was to convey the views of the Treasury Department as an entity. Mr. Gerety, the official most closely involved in administering FSOC, stated firmly that FSOC as a separate body did not request or authorize "Penny Wise." But in his view it did advance the Administration's goal of getting support for the implementation and effectiveness of Dodd-Frank.

If either of the latter, did the Department consider that any communication using Treasury's letterhead and agency symbol would be construed as the Department's views?

Ms. LeCompte agreed that this was the intent.

Did the Department coordinate with or seek assistance from either the SEC or CFTC in the preparation or release of the tweet or posts?

Ms. LeCompte said that her office fact checked the content of "Penny Wise" with the public affairs offices at both the SEC and the CFTC, and they incorporated the feedback received. She said that neither agency raised any concerns with Treasury's plans to publish the content.

How much of the Department of Treasury's Office of Public Affair's resources, both in terms of dollars and staff, are used for new media?

Ms. LeCompte stated that the Office of Public Affairs devotes one GS-9 FTE to new media.

Does the Office contract with public relations or public affairs firms for new or traditional media?

Ms. LeCompte said that there is no contracting done.

Does the Office train its staff to recognize and avoid violations of 18 U.S.C. 1913 and sections 716 and 719?

Ms. LeCompte said that OGC provides ethics training to all Treasury staff, including those in Public Affairs. As she said previously, she looks to the Office of the General Counsel to ensure content is compliant with all laws and ethics policies.

If so, were policies and procedures followed in this instance?

Ms. LeCompte stated her opinion that they were.

Did you personally create, edit, review or approve this particular product?

Ms. LeCompte said that she did not create this product, but did provide edits and approved it.

What is the volume of PA's output, per day/week?

Ms. LeCompte said that Public Affairs's work output is highly variable; there is no average day or week.

How much is run by OGC?

Ms. LeCompte said that her office generally shares with OGC all original content disseminated by Public Affairs, including press releases, fact sheets, remarks/speech text, blog posts and infographics such as this one.

Are proposed products coordinated with other offices/bureaus/outside entities?

Ms. LeCompte answered this question by referring to her answers to the previous questions.

Does the Office have responsibility for Department communication with Congressional Members and Committees?

Ms. LeCompte said that the Office of Public Affairs does not have this responsibility; it is the responsibility of the Office of Legislative Affairs.

DISCUSSION

Notwithstanding the statements of the three officials above, it appears that the actual OGC vetting process was less formal and structured. The lawyers in charge of OGC's General Law, Ethics and Regulation division (GLER), which has primary responsibility for providing ethics, standards of conduct, and appropriations law-related advice, indicated that theirs was not actually the office that provided the OGC blessing to "Penny Wise." Rather, this was done by a staff attorney in OGC's Banking and Finance division. And that attorney, Steve Laughton, told me:

> Just to be clear - B&F did not review the blog post. B&F reviewed a slide deck - one page of which contained information similar to what was contained in the blog post. B&F's review focused on the accuracy of the descriptions of the various titles of the Dodd-Frank Act. I also have some familiarity with appropriations law. I believe that if the line was crossed in terms of the prohibition on using appropriated funds for grassroots lobbying, I would have caught it.

Brian Sonfield, the Deputy Assistant General Counsel for GLER described his office's procedure as follows:

1) GLER does, in fact, memorialize its vetting process with regard to Public Affairs clearance items, in that it is GLER's practice to respond to such clearance items by email.

2) That said, GLER doesn't have a formal log-in/log-out system for these types of items GLER does have a log-in/log-out system, but that system is used for long-term attorney work assignments, or for more complex items in which we want to keep track of GLER's work product for historical purposes. The GLER log-in/log-out system generally is not used for fairly routine items that are resolved on the same day that they are received.

3) GLER does not keep track of clearance items that are sent to other OGC offices, such as items with respect to which B&F has been asked to clear.

When I asked whether there was an issue with another OGC division doing the vetting to assure compliance with the anti-lobbying provisions, Mr. Sonfield assured me that

> The anti-lobbying principles embodied in Section 716 and elsewhere are pretty simple, and my impression is that attorneys in the other AGC offices are familiar enough with these principles that they can spot issues when they arise. In addition, my understanding is that the employees in the Public Affairs shop are also familiar with these anti-lobbying principles, so it wouldn't be necessary for every blog or posting to be sent to GLER.

Whether this is the best answer or practice across the board, I think it's true in this particular matter involving the "Penny Wise" outreach. The OGC 2009 guidance is consistent with DOJ OLC's consistent interpretations of what the law does and does not allow to be done with appropriated funds in the area of public outreach and communication of agency goals and positions. What OLC calls "grass roots" lobbying – specifically calling for people to write and call their representatives regarding their positions and votes on particular bills – is clearly not what the Department was doing in its "Penny Wise" outreach in mid-July. For that reason, I do not see that the Department misused appropriated funds, or came close to violating 19 U.S.C. section 1913, or Sections 716/719 of the FY 2012 Appropriations Act.

That being said, the confidence that the assistant and deputy assistant secretaries expressed about OGC's guidance and vetting process seems to assume a more formal and inclusive review process than actually appears to exist. The review that was conducted here did the job – there was no violation – but it might not be sufficient for more complex, close, or subtle situations.