

EXHIBIT B

OFFICE OF
INSPECTOR GENERALDEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 4, 2017

MEMORANDUM FOR INSPECTOR GENERAL THORSON

FROM: Rich Delmar
Counsel

SUBJECT: Inquiry Re Use of Government Aircraft by Secretary Mnuchin

After media and public inquiries appeared regarding Secretary Mnuchin's use, on August 21, of a government aircraft for a trip to the Mint's Bullion Depository in Kentucky, you tasked me to conduct an inquiry regarding the trip's planning and justification. I requested relevant records from the Department's Office of General Counsel. We later received media inquiries indicating that the Secretary had used, or requested, government air transport for other trips, and I expanded my record request to include all such requests and uses. We received more records in early September. After analysis of those submissions and discussions with relevant Department officials, we made a further information request on September 19¹, which resulted in production of more records as well as a legal discussion from OGC, which is set out and analyzed below. Last week, in light of similar events at other departments, we expanded the inquiry to include uses of non-governmental aircraft other than regularly-scheduled commercial airline service; i.e. charters.

Based on the material obtained, discussions with Departmental officials, my research, and analysis of OGC's legal presentation, I present the following fact summations and conclusions for your review, and possible referral to the Department for its consideration.

Background

Nine requests for use of government aircraft have been made on behalf of the Secretary. Seven resulted in provision of military aircraft; one is for a trip planned for later this month, and one (the "honeymoon trip") was withdrawn. Below I provide the details of each request, the process by which each was made and reviewed, and the legal/policy/operational standards that appear to have been applicable.

In addition to the universe of government aircraft requests, we asked the Assistant Secretary for Management if the Secretary has used chartered private air transport at Government expense. The ASM advised that no such uses have occurred. We were also advised that the Department has an MOU with the Federal Aviation Administration, dated October 1, 2014, for provision of as-needed air transportation. As described more fully below, three of the trips at issue involved discussions with FAA officials about the possibility of using FAA aircraft; ultimately none was ever used.

¹ In which we asked about the current controlling guidance on making requests for government aircraft, and for all records created by or received by any Treasury employee or contractor, to include memoranda, emails, records of phone calls, records of meetings, and all other recordings of activity, including drafts, that provide analysis and justification for a support mission designation or a use of government aircraft vice other means of transportation.

Of the nine requests (seven trips taken, one planned for late October, and one request withdrawn) noted in this report, all were requests made to the White House for designation as White House Support Missions. We were told by a Treasury OGC official that the Department followed procedures propounded by the White House when it requested use of government aircraft for the Secretary's travel. These procedures, we were told, had been issued by the Obama Administration, and had been carried over and adopted by the Trump Administration.

The White House Guidance (the Daley Memo)

On April 4, 2011, White House Chief of Staff William Daley issued a memo to all executive departments and agencies regarding procedures to request use of military aircraft on White House Support Missions. This memo was a reiteration and update of a memo propounded by then-Chief of Staff Rahm Emanuel in early 2009. This memo explains that the general standards for use of government aircraft are set forth in OMB Circular A-126, dated February 10, 1993², and that these standards apply to all senior executive branch officials and to all government-owned; leased, chartered and rental aircraft operated by Executive Agencies. In particular, the memo clarifies that only in "rare circumstances" may an employee of a department or agency travel on a military aircraft "in support of the President or Vice President" on a so-called "White House Support Mission." The memorandum also provides procedures for obtaining approval to travel as a White House Support Mission.

To be considered a White House Support Mission, the President must have specifically directed that the travel occur. Travel that is simply in general furtherance of a Presidential initiative does not qualify. Nor does the fact that the President is aware of, or agrees with, the need for a trip necessarily make it a White House Support Mission. The President must have directed the trip to be made. The Daley memo states that the President must have specifically directed the government employee to undertake the assignment that requires the travel, although it is not necessary that the President have personally and specifically directed the use of military transport to undertake that assignment. The White House Deputy Chief of Staff for Operations is authorized to designate the particular means of transportation.³

Furthermore, to be designated a White House Support Mission, the Daley Memo requires that one or more of the following circumstances must also exist:

² Section 4 of the OMB Circular, however, specifically states: "4. Scope and Coverage. This Circular applies to all government-owned, leased, chartered and rental aircraft and related services operated by Executive Agencies except for aircraft while in use by or in support of the President or Vice President.

And the otherwise generally applicable Federal Travel Regulations note, at 41 C.F.R. § 301-70.808:

Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A-126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A-126 does not apply to aircraft while in use by or in support of the President or Vice President.

Since the principal purpose of the rules in this part is to implement Circular A-126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

³ This process is modified by the September 29 memo from the OMB Director, M-17-32, set out and discussed below.

Commercial airline or aircraft service (including charter) is not reasonably available; "reasonable availability" mean that the commercial means is unable to meet the traveler's departure and/or arrival requirements within a 24-hour period;

Use of government aircraft is more cost-effective than commercial air;

Use of government aircraft is required to meet emergency needs or national security concerns (e.g., an emergency exists, there are demonstrated personal security requirements, there are 24-hour secure communications requirements, or there are identified emergency action responsibilities); or,

Other compelling operational considerations make commercial transportation unacceptable.

Once designation as a White House Support Mission is approved, the Deputy Chief of Staff for Operations has discretion in approving a request as reimbursable (agency pays by reimbursing DOD) or non-reimbursable (DOD absorbs expense) in connection with the overall review of a request for approval.

The Deputy Chief of Staff for Operations, or his/her designee, must approve all requests for designation as a White House Support Mission. All requests must be in writing and should include the information contained in, and be in substantially the same form as, the template incorporated in the memo (set out below).

Requests submitted by Cabinet-level officials, agency heads, Presidential emissaries, or individuals acting on their behalf -other than requests from the State Department-should be forwarded in writing to the Assistant to the President for Cabinet Affairs (Cabinet Secretary). The Cabinet Secretary will review the request and will forward any requests that meet the above-stated guidelines with his recommendation to the Assistant to the President for Management and Administration. He, in turn, will consult with the White House Military Office to determine the cost of the proposed travel, to assess the availability of aircraft, and to obtain a recommendation from the Director of the White House Military Office on whether to approve the request. The request and all recommendations will then be forwarded to the Deputy Chief of Staff for Operations who may consult with the White House Counsel (or his designee), prior to making a final determination to approve or deny the request and, if approved, whether the approval is on a reimbursable or non-reimbursable basis.

Requesting agencies shall make every effort to submit requests as early as possible, and to the extent feasible, no later than 7 days before the proposed travel. Subsequently, these requests should be approved by the Deputy Chief of Staff for Operations no later than 4 working days before the initial travel date to ensure aircraft availability and provide adequate time for aircrew mission planning (e.g. diplomatic clearances, airfield suitability, instrument approach/departure procedures, weather, and visas). If the requesting agency cannot meet the 7 day timeline, an exception to policy must be requested. Justification for this exception must be provided in the "Special Considerations" paragraph of the WHSM request. A copy of the request should be forwarded to White House Airlift Operations at the same time it is submitted to the Cabinet Secretary or National Security Advisor. The Memo then specifies this process:

The Deputy Chief of Staff, or the Assistant to the President for Management and Administration, will notify the requesting party of the final decision and will return the signed, approved/denied request to the originator, with copies to the Office of Management and Administration, the National Security Staff or Cabinet Secretary, (as appropriate), and White House Airlift Operations.

If approved, the requesting party must designate a 24-hour point of contact that is then responsible for initiating contact with White House Airlift Operations, reviewing all mission details, and advising if the request is withdrawn or cancelled. After consulting with the point of contact, White House Airlift Operations will task the appropriate Department of Defense organization to plan and execute the mission.

Once a request is approved, any change in the date, itinerary, or number/nationality of passengers must be submitted in writing to the Deputy Chief of Staff for Operations, with copies to White House Airlift Operations, the Assistant to the President for Management and Administration, and the Cabinet Secretary or National Security Advisor, as appropriate. White House Airlift Operations will notify the Department of Defense of significant changes in mission plans only after the Deputy Chief of Staff approves the change.

The Daley memo incorporates a template to be used for officials to request White House Mission Support designation and authority to use government aircraft:

MEMORANDUM FOR DEPUTY CHIEF OF STAFF

THROUGH: DIRECTOR OF THE OFFICE OF MANAGEMENT AND
ADMINISTRATION

THROUGH: CABINET AFFAIRS OR NATIONAL SECURITY COUNCIL (AS
APPROPRIATE)

FROM: AS APPROPRIATE

SUBJECT: Request White House Mission Designation for Travel

Request approval of the following proposed White House Mission:

1. Requesting Principal: (must be Cabinet, Cabinet level Executive, Director of CIA or Director of FBI).
2. Purpose of the trip: (include statement outlining reasons that agency assets or commercial aircraft accommodations are not available or appropriate for the mission).
3. 24 hour Point of Contact: (include telephone numbers/email)
4. Travel Itinerary:
 - a. Dates: (from initial departure until final destination)
 - b. Requested time of departure: (at initial location and each intermediate location)
5. Total number of passengers: (list all passengers by name, to include the Principal; annotate if a foreign national)
6. Special considerations: (Secure communications required? Reimbursable/non-reimbursable request? Why memo is submitted less than 7 days prior to the proposed departure date?)

APPROVED AS NON-REIMBURSABLE

APPROVED AS REIMBURSABLE

DISAPPROVED

Deputy Chief of Staff

Cc: Director, White House Military Office
Cabinet Affairs or Exec Secy, National Security Staff (as appropriate)
Director, White House Airlift Operations

For each of the nine trip requests at issue, I provide a summary and analysis using the following format, which incorporates the required elements in the Daley memo template.

TRIP REQUEST ANALYSIS

Trip dates, itinerary specified?

White House Support Mission designation requested?

President directs trip be made?

Purpose analysis/justification provided?

Commercial airline or aircraft service (including charter) is not reasonably available; "reasonable availability" definition is that the commercial means is unable to meet the traveler's departure and/or arrival requirements within a 24-hour period;

Use of government aircraft is more cost-effective than commercial air;

Use of government aircraft is required to meet emergency needs or national security concerns (e.g., an emergency exists, there are demonstrated personal security requirements, there are 24-hour secure communications requirements, or there are identified emergency action responsibilities); or,

Other compelling operational considerations make commercial transportation unacceptable.

Request submitted to proper White House officials?

Assistant to the President for Cabinet Affairs (Cabinet Secretary).

Assistant to the President for Management and Administration then consults with White House Military Office to determine cost, assess availability of aircraft, and to obtain recommendation from Director of White House Military Office.

The request and all recommendations will then be forwarded to Deputy Chief of Staff for Operations who may consult with White House Counsel (or designee), prior to making final determination to approve or deny the request and, if approved, whether approval is on a reimbursable or non-reimbursable basis.

Request made timely, or exception explained?

Requesting agencies shall make every effort to submit requests as early as possible, and to the extent feasible, no later than 7 days before the proposed travel.

If the requesting agency cannot meet the 7 day timeline, an exception to policy must be requested. Justification for this exception must be provided in the "Special Considerations" paragraph of the WHSM request.

A copy of the request should be forwarded to White House Airlift Operations at the same time it is submitted to the Cabinet Secretary or National Security Advisor.

The Deputy Chief of Staff, or the Assistant to the President for Management and Administration, will notify the requesting party of the final decision and will return the

signed, approved/denied request to the originator, with copies to the Office of Management and Administration, the National Security Staff or Cabinet Secretary, (as appropriate), and White House Airlift Operations.

If approved, the requesting party must designate a 24-hour point of contact that is then responsible for initiating contact with White House Airlift Operations, reviewing all mission details, and advising if the request is withdrawn or cancelled.

Once a request is approved, any change in the date, itinerary, or number/nationality of passengers must be submitted in writing to the Deputy Chief of Staff for Operations, with copies to White House Airlift Operations, the Assistant to the President for Management and Administration, and the Cabinet Secretary or National Security Advisor, as appropriate.

TRIP REQUEST ANALYSES

Trip No.1

London/Berlin/Baden-Baden, March 15-18, 2017

White House Support Mission designation requested?

Yes.

President directs trip be made?

Not explicit⁴; however, memo states that Secretary is President's principal representative at the G-20 Finance Ministers' Conference, and that additionally during the trip the Secretary will meet with the British Finance Minister and Bank of England Governor and the French Finance Minister.

Purpose analysis/justification provided?

As with the other trips discussed here, no detailed analysis provided. The request memo makes a standard statement that "due to scheduling, logistics, and secure communications needs," non-reimbursable government air transportation is requested. The conclusory statements are not supplemented with details, and thus do not provide the level of detailed analysis clearly called for in the Daley Memo framework.

For this trip, we were provided with emails indicating some internal research on commercial air alternatives, with discussion why they would not work. But it does not appear that this analysis was incorporated in the request memo. We were also provided with similar Support Mission request memos for three trips to G-20 Finance Ministers Conferences in 2014, 2015, and 2016, all of which used the same summary justification, and all of which were approved. .

Documentation shows trip was made using a C-32 transport (military version of Boeing 757), that per-hour cost was \$15,994, that aircraft was used for 18.83 hours, and direct costs were thus computed as \$301,167.02.

⁴ This may be a limitation of the format of the request form: it may be intended to allow the conclusion that approval of the request by the Deputy Chief of Staff denotes Presidential direction. In fact, the Treasury General Counsel advised that he discussed the process with the White House Counsel's Office, and that

The White House Counsel's Office again confirmed to [him] that the signature of the White House Deputy Chief of Staff for Operations constitutes the only signature required or provided under the Daley Memorandum for approval of White House Support Mission requests. The White House Counsel's Office further confirmed that the White House Deputy Chief of Staff's approval signifies that the necessary conditions for conducting a White House Support Mission have been met.

Trip No. 2

Bari, Italy, May 11-14, 2017

White House Support Mission designation requested?

Yes

President directs trip be made?

Not explicit. See note 4. However, memo states that Secretary is President's principal representative at the G-20 Finance Ministers' Conference,

Purpose analysis/justification provided?

No detailed analysis provided. Memo asserts "due to scheduling, logistics, and secure communications needs," non-reimbursable government air transportation is requested. "A plane with secure communications capabilities is requested given the potential for developments during travel related to a number of issues."

Treasury requested provision of a C-40 (military version of Boeing 737); however, documents show trip conducted in C-32 (757), with \$15,944 hourly rate, 19.66 hours expended, for total direct cost of \$314,442.04.

Trip No. 3.

Ottawa, Canada, June 9, 2017

White House Support Mission designation requested?

Yes.

President directs trip be made?

Not explicit. See note 4. Memo states trip is for “bilat” [bilateral] conference with Canadian Finance Minister as well as conference with business leaders.

Purpose analysis/justification provided?

No detailed analysis provided. Memo asserts “due to scheduling, logistics, costs, and secure communications needs” government air is requested. Memo then states that a plane with secure communications capabilities is “required given the potential for developments during travel related to a number of issues.” No further detail provided in memo or in other material provided to OIG.

Treasury requested provision of a C-40B (737). Air Force indicated direct aircraft costs were \$16,350. Treasury had earlier discussed with FAA use of its aircraft pursuant to 2014 MOU.

Passenger manifest includes several media members and Ms. Louise Linton, Secretary Mnuchin’s wife. Records include determination of cost of her travel, pursuant to Federal Travel Regulation, and proof that it was paid by the Secretary.

Trip No. 4.

Miami, June 15, 2017

White House Support Mission designation requested:

Yes.

President directs trip be made?

Not explicit. See note 4. Memo states trip is for “bilat” conference with Mexican Finance Minister as well as attendance at Conference Prosperity and Security in Central America.

Purpose analysis/justification provided?

No detailed analysis provided. Memo asserts “due to scheduling, logistics, costs, and secure communications needs” government air is requested. Memo then states that a plane with secure communications capabilities is “required given the need for the Secretary’s participation on a secure call during travel.” No further detail provided in memo or in other material obtained by OIG.

Treasury requested provision of a C-37B (military version of Gulfstream 550). Air Force indicated direct aircraft costs were \$43,725.50. Treasury had earlier discussed with FAA use of its aircraft pursuant to 2014 MOU; FAA provided cost estimate for use of its aircraft of \$26,953.33. Records show communication from Treasury Travel Office to Secretary’s assistant: “while I understand that current availability of commercial flights do not accommodate scheduling needs, for your awareness, the cost per person on commercial air is approximately \$688 round trip.”

Passenger manifest shows Secretary, 4 staff, and 2 Secret Service agents outbound; Secretary and 3 Secret Service agents on return trip.

Trip No. 5.

New York, August 15, 2017

White House Support Mission designation requested?

Yes

President directs trip be made?

Yes. President requested Secretary comes to Bedminster, N.J. (later changed to Trump Tower in New York) to discuss pending issues regarding tax reform and tariffs. Request non-reimbursable use of government aircraft.

Purpose analysis/justification provided?

No detailed analysis provided. Some discussion of other summoned Cabinet members coming on same air mission for cost savings, but amended request memo on August 10, shows manifest both ways of Secretary, his chief of staff, and Secret Service detail. However, August 14 internal email suggests Secretary of Transportation and OMB Director were on flight to New York, but not on return trip, apparently because Secretary Mnuchin was planning on conducting a classified phone discussion with the Secretary of State, and the others lacked the necessary clearances that would have allowed the Secretary to speak openly.

Treasury requested provision of a C-37A (military version of Gulfstream V). Air Force indicated direct aircraft costs were \$15,112.50. Trip routing was Joint Base Andrews to Teterboro and return, 179 miles each way.

Trip No. 6.

Louisville and Ft. Knox, Kentucky, August 21, 2017

White House Support Mission designation requested?

Yes, trip for official event with Senate Majority Leader McConnell and other officials and visit to Mint's Bullion Depository at Ft. Knox. Request reimbursable use of government aircraft.

President directs trip be made?

Not explicit. See note 4.

Purpose analysis/justification provide?

No detailed analysis provided. Standard language used: "Due to scheduling, logistics, and communications needs, the use of reimbursable military aircraft, preferably a C-40, is requested."

This trip had been under discussion for some time and was originally scheduled for earlier in August, but it was pushed back to accommodate the delay in the Senate's recess. Six dates in mid-August were proposed to Leader McConnell and August 21 worked for everyone. There is no indication that the date was chosen to coincide with the solar eclipse. When an earlier date was under consideration, there was discussion with FAA to use their aircraft; cost quoted at \$17,486.29. But there was concern that the available FAA aircraft, a Cessna Citation, would be unusable if the runway at Godman Army Airfield (Ft. Knox's facility) was wet⁵. In the end, an Air Force C-37B (Gulfstream 550) was used, at a stated cost of \$26,900.25.

There is internal communication suggesting that secure communications would not be needed on this trip; however the final August 16 memo requesting White House Mission designation later stated "A plane with communications capabilities is requested in the event that the Secretary's participation on a call during travel arises."

Ms. Louise Linton, the Secretary's wife, was aboard the aircraft, both outbound and inbound. Records indicate that the applicable reimbursement amount was determined, and was paid by the Secretary.

⁵ We have not independently verified this assertion.

Trip No. 7.

Parkersburg, WV and Las Vegas, NV, August 28-29, 2017

White House Support Mission designation requested?

Yes, trip for official events with Senators Capito and Manchin and Representative McKinley in WV and Senator Heller in NV. Request reimbursable use of government aircraft.

President directs trip be made?

Not explicit. See note 4.

Purpose analysis/justification provided?

No detailed analysis provided. Standard language used: "Due to scheduling, logistics, and communications needs, the use of reimbursable military aircraft, preferably a C-40, is requested." Memo further states "A plane with communications capabilities is requested in the event that the Secretary's participation on a call during travel arises."

Records show two hours of official events in Parkersburg and two hours of official events in Las Vegas. Air Force records show trip made in C-37A (Gulfstream V) for total direct cost of \$94,100.50.

Trip No. 8.

Trip to several countries in Middle East, late October 2017

White House Support Mission designation requested?

Yes, trip for "bilats" and press conferences with host government officials and participation in business roundtables with local and other business leaders.

President directs trip be made?

Not explicit. See note 4.

Purpose analysis/justification provided?

No detailed analysis provided. Standard language used: "Due to scheduling, logistics, and communications needs, the use of reimbursable military aircraft, preferably a C-40, is requested." Memo further states need for secure communications capabilities; no specifics provided, and email states that secure communications is "preferred," and that presently available C-40 lacks secure communication suite. Proposed manifest shows Secretary, nine Treasury and two non-Treasury officials, ten Secret Service, and seven media. No Air Force computation form yet prepared.

In addition to the eight completed and planned trips discussed above, I reviewed the paperwork associated with a trip request that was submitted and then withdrawn. This request was for personal travel: the honeymoon trip of the Secretary and Ms. Linton to Britain, France and Italy, occurring August 3-12, 2017

White House Support Mission designation requested?

Form starts out with request under Federal Travel Regulation's "required use" designation, but also recites request for designation as White House Support Mission. Department states that support mission designation request was an error; see discussion at end of this section.

President directs trip be made?

Not explicit. See Note 4

Purpose analysis/justification provided?

Memo advises that Secretary plans to meet with French Finance Minister while on trip, and states that Secretary needs to be able to monitor many sensitive issues⁶ No detailed analysis provided. Records show communication between Treasury Office of International Affairs and State Department advising of personal trip, and Secretary's need to make a call at the TS/SCI level while in Scotland. Several inquiries about availability of secure communications and SCIFs; concerns that only embassies have facilities capable of handling TS/SCI calls and activities. Internal discussions assert that military aircraft will be cheaper than setting up portable SCIFs, and "most cost-effective" way to assure access to secure communications.

On October 2, I was advised that the Secretary is among the senior government officials who are required by applicable authority and policy to have access to secure communications at a high level of classification at all times – including both official and personal travel. I confirmed this by reviewing relevant documents. I was further advised that this trip request was the subject of a meeting between the Secretary's chief of staff and the White House Deputy Chief of Staff, and that after alternative secure communications assets were discussed and provided, this request was withdrawn at the meeting. This is the submission I received from an OGC official regarding this use request:

From August 3 to 12, the Secretary took a personal trip to Europe in connection with which Treasury evaluated various options for ensuring the availability of secure communications capabilities. Treasury first evaluated the Secretary's ability to access local Secure Compartmented Information Facilities while on travel in Edinburgh, Paris, Gargnano (Italy), and Milan. With the exception of Paris, Treasury did not identify appropriate facilities that were readily accessible. Treasury determined that the appropriate facility nearest to Edinburgh was located in London, and the appropriate facility nearest to Gargnano and Milan was located in Rome. Other surveyed locations, including any military installations proximate to the Secretary's route of travel, could not provide TS/SCI communications support. Treasury next submitted a request to the White House for the use of a military aircraft to meet the Secretary's secure communications needs. It was anticipated that an appropriately configured aircraft could provide communications support while in transit and on the ground – essentially functioning as a mobile SCIF. On the same day that the request was submitted, the

⁶ Nine categories of sensitive issues were described to me by OGC officials on October 2.

Secretary's Chief of Staff met with the White House Deputy Chief of Staff about the request. During the conversation between the Secretary's Chief of Staff and the White House Deputy Chief of Staff, the Chief of Staff orally withdrew the request after being informed that the White House could and would provide alternative secure communications capabilities. The request was not granted or denied at any time and was pending for less than six hours.

On August 2, the Secretary attended a training session by the White House Military Office on the use of the secure communications capability that was provided. The Secretary regularly used this capability to engage in secure communications during the trip, and he also used the U.S. Embassy in Paris to conduct certain official business.

During the trip, the Secretary traveled on commercial flights, including one short chartered flight, and the Secretary paid for all such flights himself.

Additionally, on October 4, OGC provided a further statement to clarify the basis for this trip request:

On August 1, 2017, Treasury requested authorization to use government aircraft in connection with the Secretary's upcoming personal trip to Europe. This was not a White House Support Mission Designation request. Unlike the Support Mission requests—which were titled as requests for White House Mission Designations in the subject line—the August 1 request was titled “Request for MilAir Support for TS-SCI Communications during Travel.” In addition, the first page of the request clearly states that White House approval was being sought “pursuant to the ‘required use’ provision of Federal Travel Regulation § 301.10.261”—which has no application to White House Support Missions—and the request's analysis focuses entirely on the criteria for “required use” approval. The last page of the request mistakenly refers to a White House mission; that stray reference was an error, as the substance of the request makes clear.

Department's Position

On September 25 an OGC official responded to our September 19 questions and request for records:

You also asked whether Treasury OGC authorized or otherwise provided input on the Department's nine requests to the White House for the use of military aircraft by the Secretary since January 2017. As discussed below, none of these travel requests were of the type that triggers the requirement under the Federal Travel Regulation that the Department's senior legal official authorize the travel; accordingly, no such authorization was sought or provided. However, OGC did provide input in connection with some of the travel requests.

The Federal Travel Regulation (FTR) generally provides that the agency's senior legal official (or his/her principal deputy) must authorize, in advance and in writing, all travel by senior federal officials on government aircraft. 41 C.F.R. § 301-10.262(b). For Treasury, such authorization would be provided by the General Counsel or the Principal Deputy General Counsel. However, the FTR contains two exceptions applicable to the travel requests about which you have inquired.

First, the FTR does not apply to use of military aircraft on "White House Support Missions," i.e., missions led by Cabinet-level officials or Presidential emissaries in support of the President or Vice President. 41 C.F.R. § 301-70.808 ("Circular A-126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A-126, the rules in this part also do not apply to such travel."); see also Circular A-126, Paragraph 4 ("Scope and Coverage") ("This Circular applies to all government-owned, leased, chartered and rental aircraft and related services operated by Executive Agencies except for aircraft while in use by or in support of the President or Vice President"). Instead, authorization for "designation as a White House Support Mission" using government aircraft must be requested from the White House pursuant to a long-standing approval process in place since at least 2005. See Memorandum from William M. Daley (April 4, 2011) (establishing guidelines and specifying a template entitled "Request White House Mission Designation for Travel"); Memorandum from Rahm I. Emanuel (March 13, 2009) (predecessor memorandum); "White House Support Mission" request from 2005 (attached). The White House Deputy Chief of Staff for Operations makes this designation. He "may consult with the White House Counsel (or his designee)," see Daley Memorandum at 2, but pre-authorization by the agency senior legal official is not required, presumably because the White House is in the best position to assess whether a request meets its own standards and to allocate use of military aircraft among Cabinet officials.

Second, under the FTR, the agency senior legal official does not authorize travel by the agency head if the President determines that the travel meets the "required use travel" standard. 41 C.F.R. § 301-10.262(a)(1). "Required use travel" may include personal travel and may be authorized because of a bona fide communications need (e.g., the need to maintain continuous secure communications capability), security reasons, or exceptional scheduling requirements. 41 C.F.R. § 301-10.261(b). (There also is classified guidance on the availability of secure communication capabilities that we would be glad to discuss with you.)⁷

⁷ As noted above in the discussion of the "honeymoon trip," I did review this material and I conclude that it appears to be as asserted.

With regard to Treasury's requests to the White House since January 2017 for use of military aircraft, eight requests (including that related to the Fort Knox trip) sought designation as White House Support Missions. Adhering to the process mandated by the White House, the Secretary's office submitted memoranda to the White House Deputy Chief of Staff for Operations in each case and specifically requested "White House Mission Designation" for the proposed travel and authorization to use government aircraft. Seven of the requests were approved by the White House, and one is still pending. Although OGC did review a subset of the White House Support Mission requests before they were sent by the Secretary's office to the White House, neither the FTR nor the written White House procedures required pre-approval for such requests by the agency's senior legal official. Based on our research (including conversations with the Travel Office and with [the former Assistant General Counsel responsible for general law and ethics]), this is also fully consistent with the Treasury practice during the prior Administration.

Circular A-126 and the Daley Memorandum note that, for travel to qualify as a "White House Support Mission," the President must have "specifically directed" that the travel occur. The Daley Memorandum prescribes a process for securing that direction. Indeed, the form of request provided by the Daley Memorandum is expressly titled "Request White House Mission Designation for Travel" (emphasis added). Rather than personally approving every White House Support Mission by every Department or agency and every Presidential emissary, the President acts through an established procedure administered by his subordinates. As mandated by the White House, agencies propose trips for designation as "White House Support Missions," and the White House Deputy Chief of Staff "approve[s] all requests for designation as a White House Support Mission" using military aircraft. As best as we can ascertain based on review of past travel memoranda and conversations with the Treasury Travel Office, the "White House Support Mission" travel of the prior three Secretaries was all approved by the White House Deputy Chief of Staff with no separate or freestanding determination or direction by the President. In short, Treasury defers to the process required by the White House, and we are not aware of any instance of the White House suggesting that their specified process was insufficient to secure both "White House Support Mission" designation and authorization to use military aircraft for such a mission.

The only other request by Treasury to the White House for authorization of travel on government aircraft was in relation to the Secretary's personal trip to Europe (August 3-12). As previously explained, the Secretary is a member of the National Security Council and has responsibility for the Office of Terrorism and Financial Intelligence. He requires access to secure communications even when he is on personal travel, and Treasury considered a number of options to meet that need during his trip to Europe. On August 1, the Secretary's office submitted a memorandum to the White House asking the White House to consider the use of a government aircraft during the Secretary's travel under the "required use" standard. The request submitted to the White House made this clear. ("Treasury makes this request pursuant to the 'required use' provision of the Federal Travel Regulation. . . .") Although OGC reviewed this request to ensure the appropriate White House authorization was sought, OGC did not pre-authorize the proposed travel because, as indicated above, the FTR provides that the agency's senior legal official need not provide separate authorization if the President determines that the Secretary's travel qualifies as "required use travel." 41 C.F.R. § 301-10.262(a)(1). Ultimately, travel on government aircraft was deemed unnecessary after the Department identified an alternative secure communications solution that would address the Secretary's needs. Treasury withdrew the request on the same day it was submitted.

Observations and Recommendations

This inquiry has determined that from the time he took office until today, Secretary Mnuchin has taken seven official trips using government aircraft, and plans are in place for an eighth such trip later this month.

I see no violation of law in these requests and uses. Getting approval from appropriate White House officials to designate the trips as White House Support Missions places them out of the purview of OMB Directive A-126 and otherwise applicable limitations in the Federal Travel Regulation. And the clarified basis for the request associated with the August personal travel is consistent with the demonstrated requirement that the Secretary have access to secure communications even during personal travel.

What is of concern is a disconnect between the standard of proof called for in the Daley memo, and the actual amount of proof provided by Treasury and accepted by the White House in justifying these trip requests. My summaries show that in almost all cases a single boilerplate statement constituted the whole analysis and justification for designation and use of military aircraft, despite the fact that the memo clearly calls for a more rigorous and complete provision of facts and arguments. In the few cases where there was some discussion within Treasury, it was sparse, and does not appear to have been actually transmitted to the decision makers in the White House. A part of the OGC statement set out above captures the situation, and the problem, well:

As best as we can ascertain based on review of past travel memoranda and conversations with the Treasury Travel Office, the "White House Support Mission" travel of the prior three Secretaries was all approved by the White House Deputy Chief of Staff with no separate or freestanding determination or direction by the President. In short, Treasury defers to the process required by the White House, and we are not aware of any instance of the White House suggesting that their specified process was insufficient to secure both "White House Support Mission" designation and authorization to use military aircraft for such a mission.

Of course, what worked in the past may not work going forward. The OMB memo issued last week⁸ strongly suggests that more rigor will be required in future requests. I recommend that the

⁸ On Friday, September 29, OMB Director Mulveney issued a memo to all Executive Departments and Agencies, M-17-32 on the subject of Travel on Government-Owned, Rented, Leased, or Chartered Aircraft:

In light of recent events, the President has asked me to remind the heads of all executive departments and agencies of Administration policies on travel.

First, as to law and formal policy: Government-owned, rented, leased, or chartered aircraft should not be used for travel by Government employees, except with specific justification -per the Office of Management and Budget (OMB) Circular A-126 (May 22, 1992), Improving the Management and Use of Government Aircraft, and the Federal Travel Regulation (FTR).

However, beyond the law and formal policy, departments and agencies should recognize that we are public servants. Every penny we spend comes from the taxpayer. We thus owe it to the taxpayer to work as hard managing that money wisely as the taxpayer must do to earn it in the first place.

Put another way, just because something is legal doesn't make it right. Even when the criteria of Circular A-126 and the FTR allow for the use of Government-owned, rented, leased, or chartered aircraft, departments and agencies should still consider whether commercial air travel is a more appropriate use of taxpayer resources. Accordingly, with few exceptions, the commercial air system used by millions of Americans every day is appropriate, even for very senior officials.

OIG advise that future requests be ready to justify government air in greater detail, especially regarding cost comparisons and needs for security and other special factors. I further recommend that the Department require review of all such requests by the Office of General Counsel, to assure that all requests are complete, fully compliant with all applicable law, regulation, and policy, and present as strong and convincing a case as possible to justify this increasingly visible use of a government asset.

Therefore, all travel on Government-owned, rented, leased, or chartered aircraft, except space available travel and travel to meet mission requirements (as those situations are defined in Circular A-126) shall require prior approval from the White House Chief of Staff. Full-time required use travelers are exempted from this requirement. Further guidance from the White House Chief of Staff on the approval process will be forthcoming. OMB is also reviewing longstanding guidance pertaining to the use of Government-owned, rented, leased, and chartered aircraft and welcomes any suggestions that would strengthen existing controls. In the meantime, departments and agencies are reminded that they are required to adhere to the FTR and Circular A-126.