



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-306663

January 4, 2006

The Honorable Barbara A. Mikulski
United States Senate

Subject: *Contractors Collecting Fees at Agency-Hosted Conferences*

Dear Senator Mikulski:

We received your letter dated October 4, 2005, asking us to revisit our March 2005 decision, *National Institutes of Health—Food at Government-Sponsored Conferences*, B-300826, Mar. 3, 2005. In that decision, we addressed the availability to the National Institutes of Health (NIH) of its appropriation for the purpose of providing food to attendees at NIH-hosted conferences. *Id.* In addition, in response to a question from NIH, we concluded that NIH may not charge an attendance fee at conferences and retain the proceeds, nor permit its contractor to do so, because NIH lacks statutory authority. *Id.* You expressed concern that this conclusion would reduce federal efforts to bring experts together at federally hosted conferences, particularly conferences hosted by the National Security Agency (NSA), to address evolving threats to the nation.

We appreciate your interest in our March 2005 decision. However, we find no basis to change our conclusion that when an agency lacks statutory authority to charge a fee at a conference and retain the proceeds, neither the agency hosting a conference, nor a contractor on behalf of the agency, may do so. When entertaining a request for reconsideration of a decision, we consider whether the request demonstrates an error of fact or law in the earlier decision, or presents new information not considered in the earlier decision. B-271838.2, May 23, 1997. You do not assert that our March 2005 decision contained legal or factual errors. While you present information regarding agencies' practices that we did not address in our March 2005 decision, such information does not change our conclusion, as explained below.

In your letter, you state that for several years, agencies have engaged in the practice of allowing their contractors, on behalf of the agencies, to collect fees from conference participants to offset the costs of agency-hosted conferences. You explain that agencies initiated this practice after we determined that agencies themselves cannot collect such fees without statutory authority.

The miscellaneous receipts statute provides that “an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” 31 U.S.C. § 3302(b). In earlier decisions, we indeed have advised that an agency, in the absence of statutory authority, may not retain fees or other amounts paid to the government for activities relating to official duties, but must deposit such funds in the general fund of the Treasury. *E.g.*, B-302825, Dec. 22, 2004 (Office of Federal Housing Enterprise Oversight may not retain money collected from third party litigants for copying costs, but must deposit the money in the Treasury). Both GAO and federal judicial decisions have concluded that the miscellaneous receipts statute precludes an agency of the government diverting to a contractor of the government any amounts the contractor receives on behalf of the government. *See, e.g., Scheduled Airlines Traffic Offices, Inc. v. Department of Defense*, 87 F.3d 1356, 1361-63 (D.C. Cir. 1996); *Motor Coach Industries, Inc. v. Dole*, 725 F.2d 958, 968 (4th Cir. 1984) (Federal Aviation Administration (FAA) cannot hold in a trust fund amounts paid by airlines to defray FAA’s cost of acquiring new shuttle buses for Dulles Airport); *cf.* B-300248, Jan. 15, 2004.

A government agency that lacks the authority to charge and retain fees may not cure that lack of authority by engaging a contractor to do what it may not do. A contractor in this situation is “receiving money for the Government,” and the miscellaneous receipts statute requires that such funds must be deposited in the Treasury. *Scheduled Airlines Traffic Offices*, 87 F.3d at 1361-62. Consequently, in our March 2005 decision, we advised NIH that it could not “authorize its contractor to charge a fee to offset costs because, pursuant to 31 U.S.C. § 3302(b), a contractor receiving money for the government may not retain funds received for the government to pay for the conference costs.” B-300826, Mar. 3, 2005.¹

Congress, of course, may enact legislation authorizing an agency hosting a conference on behalf of the government to collect and retain an attendance fee. Should Congress wish to grant agencies such authority, agencies may in turn permit their contractors to collect such a fee. Congress has available to it a number of options, each offering Congress different degrees of programmatic oversight. For example, Congress could amend the Government Employees Training Act, 5 U.S.C. §§ 4101-4118, to allow agencies to collect attendance fees for conferences. Under 5 U.S.C. § 4110, agencies may pay the expenses of their employees attending meetings and conferences related to agency functions and management. *See* B-288266, Jan. 27, 2003. Congress may choose to add language to section 4110 permitting agencies, when hosting a conference, to charge and retain attendance fees to cover the costs of hosting the conference.² As we stated in our March 2005 decision, if an agency has

¹ The facts present in B-300826, March 3, 2005, did not require us to consider whether an agency could structure a no cost contract to achieve its objective consistent with the miscellaneous receipts statute.

² The Government Employees Training Act permits agencies to provide training to employees of other agencies, and to collect and retain a fee to offset the costs associated with training the employees of other agencies. 5 U.S.C. § 4104. *See* B-241269, Feb. 28, 1991.

such authority, an agency may permit its contractor, hosting a conference on behalf of the agency, to collect and retain fees on the agency's behalf to offset the conference costs.

Rather than enacting a statutory change with governmentwide implications, if Congress preferred, it could enact statutory language either as part of the agency's authorizing legislation or its annual appropriation act, permitting a particular agency to charge an attendance fee at conferences and use the fees to offset conference costs. Congress, on occasion, has enacted legislation permitting an agency to charge and retain a fee. For example, Congress has authorized the National Park Service to charge entrance fees at some recreational lands and to retain the fees for expenditure, rather than depositing them in the Treasury. 16 U.S.C. §§ 6802, 6806. Similarly, Congress could enact legislation permitting an agency such as NSA to charge an attendance fee at conferences and use the proceeds to defray the cost of the conferences.

As we explained in our March 2005 decision, Congress has not provided NIH with authority to charge and retain a fee at conferences. We have not analyzed laws pertaining to NSA to determine whether NSA has authority to retain and use fees collected from its conference participants. If you decide to initiate legislative action to authorize NSA or other agencies to charge fees or allow contractors to charge fees to offset the cost of hosting a conference, we are available to assist your office. If you have any questions, please contact Tom Armstrong at 202-512-8257 or Susan Poling at 202-512-2667.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel