



Decision

Matter of: Department of Commerce, Office of Inspector General—Applicability of Statutory Notification Requirement to Costs Related to Current and Anticipated Offices

File: B-335459

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DIGEST

The Department of Commerce Office of Inspector General (OIG) installed sound attenuation technology on its office exterior to protect the privacy of sensitive conversations inside its office. OIG also planned to relocate its current furniture to its new, anticipated office, and the General Services Administration (GSA) plans to make alterations to prepare the office for OIG occupancy. Section 710 of the Financial Services and General Government Appropriations Act, 2023 prohibits an agency from obligating or expending an amount more than \$5,000 to furnish, redecorate, purchase furniture for, or make improvements for the office of a presidential appointee during the period of appointment without prior notification to the House and Senate Appropriations Committees.

Section 710 applies to the cost of installing the sound attenuation technology for the entire suite of offices assigned to the Inspector General as well as to any spaces directly controlled or primarily used by the Inspector General, even if the technology was installed on the exterior of OIG's office perimeter. Section 710 also applies to expenses to relocate furniture to the Inspector General's new office space because these expenses "furnish" the office by supplying what the office needs. However, section 710 does not apply to costs related to construction and alteration of the Inspector General's anticipated office because it is not yet directly controlled or primarily used by the Inspector General, and thus, does not meet the statutory definition of "office" under section 710.

DECISION

This responds to a request for a decision from the Inspector General, Department of Commerce, regarding whether section 710 of the Financial Services and General Government Appropriations Act, 2023 requires the Office of Inspector General (OIG)

to notify the House and Senate Appropriations Committees of costs related to (1) installing sound attenuation technology to protect the privacy of sensitive conversations within OIG offices; (2) relocating furniture from the Inspector General's current office to its anticipated office; and (3) constructing and altering the Inspector General's anticipated office.¹

Our practice when rendering decisions is to establish a factual record and to elicit the agency's legal positions on the issues raised.² In this instance, the Inspector General's request letter provided factual information and OIG's legal views.

BACKGROUND

OIG maintains its headquarters in Washington, DC, where OIG installed sound attenuation technology.³ OIG plans to relocate offices to another building in the Washington, DC area.⁴ OIG plans to move current furniture to the anticipated office,⁵ and the General Services Administration (GSA) plans to make alterations to prepare the office for OIG occupancy.⁶ The discussion below contains the additional factual information critical to our analysis and conclusion on the application of the section 710 notification requirement.

DISCUSSION

OIG raises three questions that invoke a notification requirement enacted for fiscal year 2023 and carried forward into fiscal year 2024 by a continuing resolution. Financial Services and General Government Appropriations Act, 2023, Pub. L. No. 117-328, div. E, title VII, § 710, 136 Stat. 4459, 4706 (Dec. 29, 2022), *as carried forward by* Continuing Appropriations Act, 2024 and Other Extensions Act, Pub. L. No. 118-15, div. A, § 101(5), 137 Stat. 71, 72 (Sept. 30, 2023), *as amended by* Further Continuing Appropriations and Other Extensions Act, 2024, Pub. L. No. 118-22, 137 Stat. 112 (Nov. 17, 2023); B-324481, Mar. 21, 2013 (continuing resolutions carry forward the authorities and conditions of the identified appropriation for the duration of the continuing resolution).

¹ Letter from Inspector General, Department of Commerce, to General Counsel, GAO (July 14, 2023) (Request Letter).

² GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/gao-06-1064sp.

³ Request Letter, at 1-2.

⁴ *Id.* at 3.

⁵ *Id.* at 3.

⁶ *Id.* at 5

Section 710 of the Financial Services and General Government Appropriations Act, 2023 provides:

During the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is transmitted to the Committees on Appropriations of the House of Representatives and the Senate. For the purposes of this section, the term 'office' shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

Pub. L. No. 117-328, § 710.

Section 710 requires an agency to notify the Appropriations Committees before it (1) obligates more than \$5,000 to (2) furnish, redecorate, purchase furniture for, or make improvements for (3) the office of the appointee “[d]uring the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office.” Pub. L. No. 117-328, § 710. The \$5,000 threshold spans the entire time that the appointee holds office.⁷ The Inspector General is appointed by the President with the advice and consent of the Senate, and therefore, falls under section 710’s ambit. 5 U.S.C. § 401(1); 5 U.S.C. § 403a.

In this decision, we address section 710’s applicability to the following issues: first, the costs of installing sound attenuation to the exterior of the current office space; second, costs of relocating furniture to the anticipated office space; and third, costs of constructing and altering the anticipated office space.

Sound Attenuation Technology

OIG occupies a suite that includes two private offices for the Inspector General and Deputy Inspector General, as well as common office space for career staff and an entry area used by career staff and visitors. Request Letter, at 1. Although offices of the Inspector General and Deputy Inspector General are entered through the common area, both spaces have unused doors that connect to the floor’s main hallway. Access to this hallway is open to anyone entering the building. *Id.* To

⁷ OIG reported that the Inspector General position became vacant on January 6, 2024, and that the Deputy Inspector General began serving as Acting Inspector General on January 7, 2024. GAO’s Executive Vacancy System. We note, therefore, that the \$5,000 threshold will reset to begin under the tenure of the next appointee.

protect the privacy of sensitive internal discussions, OIG obligated \$800 for the purchase and installation of sound attenuation technology on the exterior of the Inspector General's and Deputy Inspector General's unused office doors nearest to the hallways, as well as in public areas outside other OIG office space. *Id.* at 1-2, Attachment B.

As stated above, Section 710 requires an agency to notify the Appropriations Committees before it (1) obligates more than \$5,000 to (2) furnish, redecorate, purchase furniture for, or make improvements (3) for the office of the appointee. Pub. L. No. 117-328, § 710. As an initial matter, the technology guards the sensitivity of internal discussions and increases the quality of the office by safeguarding the privacy of discussions that occur within it. Therefore, this installation clearly constitutes making an improvement under section 710.

We now consider the remaining question of whether this technology was installed “for the office.” Section 710 defines “office” as “the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.” Pub. L. No. 117-328, § 710. Our past decisions illustrate that, as envisioned by section 710, this definition turns on whether the relevant space is “used primarily by” or “directly controlled by” the appointee. See B-329955, May 16, 2019; B-329603, Apr. 16, 2018.

(1) The Exterior of the Inspector General's Office Doors

As with all questions of statutory interpretation, we begin with the text. B-331094, Sept. 5, 2019; B-328237, Dec. 15, 2016; see *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). In the presence of unambiguous language, we find that the ordinary meaning of the statute controls. B-332003.1, Oct. 05, 2022; see *Carcieri*, 555 U.S. at 387; B-326013, Aug. 21, 2014. In section 710, the plain meaning of “for” is a functional word that indicates the aim or purpose of an action or activity. *American Heritage Dictionary of the English Language* 684 (5th ed. 2011) (definition of “for”). Consistent with this definition, an object outside of a physical “office” space can still function as a benefit “for” the office without constituting a change “to” the office. Here, OIG installed this technology with the intent of safeguarding the privacy of sensitive conversations occurring within the office. Even though both installation locations may lie on or outside the perimeter of the “office”, the statutory language specifies that no funds may be obligated to “make improvements *for* any such office.” Pub. L. No. 117-328, § 710 (emphasis added). Here, the sound technology functions as a benefit for space directly controlled or primarily used by the appointee because the technology helps to protect the privacy of conversations in the Inspector General's office.

OIG posits that section 710 does not apply because this technology is not a benefit “to the office.” Request Letter, at 2-3. However, as we have noted above, the word “for” retains a distinct, broader meaning than the word “to.” Even if the improvement is not *to* the office because it is outside of its perimeter, it is nevertheless *for* the

office because it helps safeguard the privacy of conversations occurring within it. Therefore, the installation of this technology falls under the section 710's ambit of making an improvement "for" the office.

OIG obligated less than \$5,000 for this technology. Request Letter, at 1-2, Attachment B. When it requested our decision, OIG also stated that the cumulative total of this technology and other relevant expenses had not exceeded this statutory threshold that triggers the notification requirement. *Id.* at Attachment B. Therefore, OIG was not required to notify the Appropriations Committees before it incurred this obligation. However, section 710's threshold is cumulative in nature and imposes the limit "[d]uring the period in which the head of any department or agency . . . holds office." Pub. L. No. 117-328, 710. Thus, OIG must include this cost as it determines whether the cumulative total under the Inspector General exceeded the \$5,000 statutory threshold.

(2) The Exterior of the Deputy Inspector General's Office Doors

We apply the same statutory framework to the Deputy Inspector General's office door. Here, however, the Deputy Inspector General is not a presidential appointee.⁸ While the Inspector General might have sensitive conversations inside the Deputy Inspector General's office, this office is not directly controlled or primarily used by the presidential appointee. The Inspector General may control the entire office suite, including the Deputy Inspector General's office and its perimeter on which the sound attenuation was installed. The Inspector General may also retain the ability to reorganize or reassign space within the office suite. However, because the Inspector General assigned a space to the Deputy Inspector General, that space is no longer under the Inspector General's primary use or direct control. Therefore, the installation on the Deputy Inspector General's office door does not constitute an improvement "for" the office under section 710.

Furniture Relocation

OIG plans to relocate its headquarters to another location in the Washington, D.C. area. Request Letter, at 3. OIG does not plan to purchase any new furniture but intends to move current furniture into the anticipated office. *Id.* We must, therefore, examine whether section 710 applies to this furniture relocation.

Section 710 lists four separate actions that each require notification: "furnish," "redecorate," "purchase furniture," and "make improvement." In analyzing statutory language, we assume that each word has distinct meaning and that Congress was aware of this meaning when legislating. B-329603, Apr. 16, 2018; see *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (citing *Babbitt v. Sweet Home Chapter of*

⁸ See 5 U.S.C. § 401(1); 5 U.S.C. § 403a; House of Representatives Committee on Oversight and Reform, *U.S. Government Policy and Supporting Positions*, at 28 (Dec. 2020), available at www.govinfo.gov/app/details/GPO-PLUMBOOK-2020 (last visited Feb. 5, 2024).

Communities for a Great Oregon, 515 U.S. 687, 698 (1995)) (noting the Court’s reluctance to treat any statutory language as surplusage). We construe statutes so that each word carries “operative effect.” B-329603, Apr. 16, 2018; see *United States v. Kay*, 359 F.3d 738, 742 (5th Cir. 2004).

Informed by these principles, we determine that Congress intended to give distinct, operative effect to each of section 710’s four limitations by listing four separate actions in the same text. Moreover, Congress used the word “or”, which creates a disjunctive list. Any one condition triggers the notification requirement. B-329603, Apr. 16, 2018; see *Azure v. Morton*, 514 F.2d 897, 900 (9th Cir. 1975). Here, therefore, “furnish” and “purchase furniture for” must retain separate meanings.

We begin by examining the verb “furnish” in ordinary English, which means to provide what is necessary or desired, or to provide furniture for. *American Heritage Dictionary* at 712 (definition of “furnish”). In everyday use, “furnish” includes purchase of furniture, but section 710’s distinct inclusion of the phrase “purchase furniture” leads us to find that “furnish” carries a broader meaning than purchase of furniture. Interpreting “furnish” to include only the purchase of furniture would result in surplusage. Our past decisions are consistent with this statutory understanding. We previously held that section 710’s usage of “furnish” includes not only purchasing furniture, but also “supplying the office or space with other equipment.” See B-329955, May 16, 2019 (a dishwasher installed in an agency head’s office constituted furnishing because it equipped the office with a perceived need); B-329603, Apr. 16, 2018 (installing a soundproof privacy booth in an agency head’s office constituted furnishing because it equipped the office with an asserted need). Thus, to “furnish” an office includes not only purchasing furniture, but also, consistent with its definition, providing the office with other equipment.

Section 710’s distinction between furnishing and purchasing furniture applies here. Furnishing retains distinct meaning that, consistent with our other decisions, extends beyond purchasing of furniture to supplying the office with equipment. The common meaning of “supply” is to make available for use. *American Heritage Dictionary* at 1751 (definition of “supply”). Specifically, the relocation expense is a necessary component of making the furniture available for use in its new location. Moreover, consistent with our precedent, the expense is necessary to “equip [the office] with what is needed.” See B-329603, Apr. 16, 2018.

OIG asserts that because it has already furnished the IG’s office with the existing furniture and equipment, section 710 does not require an additional, duplicative notification for the expense of moving that same furniture. Request Letter, at 3-4. However, as we note above, because the word “furnish” encompasses supplying an office with equipment, OIG can execute multiple furnishings with the same furniture. Each time furniture is moved into a new office, OIG furnishes the office—regardless of the furniture’s past use or purchase history—and thus must notify Congress under section 710 for each furnishing.

This interpretation is also consistent with the purpose for which Congress has enacted this requirement. Congress exercises its constitutional power of the purse when it enacts statutory notification provisions, which constitute one mechanism that Congress uses to further its constitutional authority to oversee agency use of appropriated amounts. See B-330720, Feb. 6, 2019 (“Advance notification requirements . . . provide a mechanism by which Congress may exercise its constitutional power of the purse”); B-327432, June 30, 2016 (“Congress has the right to predicate the availability of appropriations on compliance with specified notification requirements.”) Section 710’s use of the word “furnish” demonstrates Congressional intent to require agencies to notify the Appropriations Committees not only for purchases of furniture but also for other actions that constitute furnishment.

Informed by this context, we find that, for section 710 purposes, “furnishing” encompasses the costs related to furniture relocation for the Inspector General’s office that OIG contemplates here.⁹ Section 710’s \$5,000 threshold applies to the sum of relevant obligations incurred over a presidential appointee’s term. This is the first time we have addressed the issue of relocation costs within the meaning of the term “furnish,” and we recognize this might present a change in current agency practice. Therefore, moving forward, we note that section 710 encompasses furniture relocation costs and that OIG must include these costs in determining whether the cumulative total under an Inspector General’s tenure exceeded section 710’s statutory threshold. OIG should update its notifications accordingly.

Anticipated Office

Before assigning the space to OIG, GSA plans to construct the Inspector General’s anticipated office and make alterations such as replacing light fixtures, reinforcing walls, and upgrading technology. Request Letter, at 5. We next consider whether the anticipated office space meets section 710’s definition of “office” as a space “used primarily by” or “directly controlled” by the appointee. Pub. L. No. 117-328, § 710.

Here, the anticipated office remains under GSA’s primary use and direct control. Request Letter, at 5. Although OIG has signed an occupancy agreement with GSA, OIG has not yet moved into the new office and will not be liable for payments for the

⁹ We note that OIG must consider the statutory definition of “office” as it determines which obligations require notification. OIG should report relocation costs for furniture “directly controlled” or “primarily used” by the appointee. Because some relocation costs may be indirect, OIG must use a reasonable method to determine the total cost that is subject to the notification under section 710. See, e.g., B-328065, Oct. 27, 2016 (agency must use a reasonable method to determine the amount to obligate against each of multiple appropriations available for construction projects where employees made contributions to multiple projects).

space until after construction is complete.¹⁰ *Id.* Because the anticipated office space does not yet constitute the Inspector General’s “office”, section 710 does not apply to obligations related to constructing and altering the expected office.

CONCLUSION

Section 710’s notification requirement applies to the cost of sound attenuation technology installed on the perimeter of the Inspector General’s office. At the time it incurred the obligation, OIG had not exceeded section 710’s \$5,000 threshold, so no notification was necessary. However, because the \$5,000 threshold applied during the Inspector General’s tenure in office, OIG should have included this expense as it determined whether subsequent obligations required notification. The section 710 notification requirement also applies to the costs of relocating furniture to the Inspector General’s new office but does not apply to the construction and alteration costs of OIG’s anticipated office. OIG should notify the Appropriations Committees accordingly.



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¹⁰ E-mail from Acting Inspector General, Department of Commerce, to Staff Attorney, GAO, *Subject: Update on OIG’s decision request about section 710’s notification requirement* (Feb. 6, 2024).