



OFFICE OF INSPECTOR GENERAL
U.S. Department of Energy

INSPECTION REPORT

DOE-OIG-19-16

February 2019

**ALLEGATIONS REGARDING
SOUTHWESTERN POWER
ADMINISTRATION'S PROCUREMENT
OF THE PATHWAYS CORE TRAINING**



Department of Energy
Washington, DC 20585

February 14, 2019

MEMORANDUM FOR THE ADMINISTRATOR, SOUTHWESTERN POWER
ADMINISTRATION
DIRECTOR, OFFICE OF TALENT MANAGEMENT, OFFICE OF
THE CHIEF HUMAN CAPITAL OFFICER

Michelle Anderson

FROM: Michelle Anderson
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on “Allegations Regarding
Southwestern Power Administration’s Procurement of the Pathways
Core Training”

BACKGROUND

Southwestern Power Administration (Southwestern) is an agency of the Department of Energy that transmits and markets hydroelectric power. Southwestern employs about 200 Federal workers in offices located in Gore, Oklahoma; Jonesboro, Arkansas; Springfield, Missouri; and Tulsa, Oklahoma. Southwestern’s operation and maintenance budget request for fiscal year (FY) 2017 was nearly \$140 million, of which about \$260,000 was for employee training.

The Office of Inspector General received a complaint related to the former Southwestern Administrator’s plan to send management staff to Pathways Core Training (Pathways). According to its website, Pathways is an experience-based training to help individuals overcome barriers from the past, align habits and relationships to core values, and design an attainable life plan that elevates the quality of their future.

We summarized the complaint into five distinct allegations: (1) the Pathways training was not appropriate for Southwestern employees; (2) appropriated funds were misused; (3) the former Administrator had a covered relationship with the organization providing Pathways; (4) purchasing requirements were not followed; and (5) the former Administrator inappropriately used his personal funds to cover subordinates’ training costs. We conducted this inspection to determine the facts and circumstances surrounding these allegations. In December 2017, after we had initiated our inspection, the former Administrator resigned from his position.

RESULTS OF INSPECTION

We substantiated three of the five allegations related to Southwestern's procurement of Pathways; the remaining two allegations were not substantiated.

- Substantiated. We substantiated the allegation that Pathways was not appropriate training for Southwestern employees. Because the training was not appropriate for Southwestern employees, we substantiated that Southwestern misused \$17,349 in appropriated funds for FYs 2011, 2012, and 2017, a violation of 31 U.S. Code § 1301(a), the purpose statute, and may have resulted in a violation of the *Anti-Deficiency Act* (31 U.S.C. § 1341(a)). We found that Southwestern ceased paying for Pathways training when, in 2017, Southwestern's Corporate Compliance Officer identified a potential issue and discussed the appropriateness with the Department's Office of the General Counsel. We also substantiated the allegation that Southwestern's former Administrator had a covered relationship with the Pathways organization.
- Not substantiated. We did not substantiate the allegation that Southwestern had not followed Federal regulations related to competition, split disbursements, and source selection when purchasing Pathways. We also did not substantiate the allegation that Southwestern's former Administrator violated Federal regulations by using his personal funds to pay for Pathways tuition and travel costs incurred by subordinate employees that were determined to be unallowable.

A summary of the allegations is provided in Attachment 2. The substantiated allegations occurred because Southwestern officials were not aware of the appropriation restrictions until the Department's Office of the General Counsel informed Southwestern of the restrictions. As a result, Southwestern employees were sent to Pathways with misused appropriated funds that were not recovered by Southwestern.

In addition, during the performance of our inspection, we identified other matters that warrant management's attention. Specifically, we found that Southwestern officials were not following policy requirements for completing training needs assessments and individual development plans (IDP).

Content Not Appropriate for Southwestern Employees

We substantiated the allegation that Pathways training was not appropriate for Southwestern's employees. Southwestern's Corporate Compliance Officer, prior to our inspection, identified a potential issue and discussed the appropriateness of the training with the Department's Office of the General Counsel. We confirmed with an official from the Department's Office of the General Counsel that the Department's Office of the General Counsel reviewed the scope and content of the Pathways training and advised Southwestern in 2017 that it was not appropriate to expend funds for this training due to appropriations restrictions in the FY 2017 *Federal Budget, General Provisions Government-Wide, Section 714(a)* [Section 714(a)]. Section 714(a) prohibits expending funds for any employee training that does not meet an identified need for knowledge, skills, and abilities directly impacting the performance of official duties; contains elements likely

to induce high levels of emotional response or psychological stress; is designed to change participants' personal values or lifestyle outside of the workplace; or does not notify employees of the content and methods to be used in the training or require written course evaluation. We found that similar language restricting the use of training funds was included in appropriation laws dating back to at least FY 2011. Our conclusion was limited to the appropriateness of the training for Southwestern employees who are Federal employees. We did not evaluate, nor do we provide an opinion, regarding the quality of the Pathways training or its appropriateness for non-Federal entities.

Misuse of Appropriations

Because the training was determined by the Department's Office of the General Counsel not to be appropriate under Federal appropriations law, we also substantiated the allegation that Southwestern misused appropriated funds to procure Pathways. Specifically, Southwestern paid a total of \$17,349 in tuition and related travel costs for five employees. These payments related to employees who attended or were scheduled to attend Pathways in 2011, 2012, and 2017. The appropriations restrictions applied to each of these years. Upon receiving the Department's Office of the General Counsel's concerns regarding the appropriateness of the training in 2017, Southwestern recovered \$1,660 in 2017 tuition fees. This recovery included refunds from Pathways in the amount of \$1,000 for cancelled sessions, \$50 from two employees for nonrefundable deposits, and \$610 from the former Southwestern Administrator on behalf of one employee who had attended the training in 2017. Additionally, Southwestern denied another employee's \$1,178 unpaid travel claim.

In addition to tuition and travel costs, we also determined that Southwestern inappropriately paid for overtime and compensatory time for employees who attended the courses. We noted that in 2011 an employee received 126 hours of overtime and 49 hours of compensatory time to attend Pathways. In 2017, employees received 16 hours of overtime and 108 hours of compensatory time to attend Pathways. We did not calculate the monetary value of this premium pay.

The misuse of appropriated funds to procure Pathways violates 31 U.S. Code § 1301(a), which prohibits the use of appropriations for purposes other than those for which they were appropriated, and may have resulted in a violation of the *Anti-Deficiency Act*. Because the Department's Office of the General Counsel determined that it was not appropriate to spend funds for this training under Federal appropriations restrictions of *Section 714(a)*, no funds were available to pay for the training costs. The *Anti-Deficiency Act* prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation. The Department's *Financial Management Handbook*, which implements Department Order 534.1B, *Accounting*, requires that anyone who knows of a possible violation forward a report to the Field Chief Financial Officer. In this situation, Southwestern's Chief Financial Officer must then formalize a report of any potential violation of legal or administrative fund control limitations and submit it to the Department's Office of the Chief Financial Officer. Although Southwestern subsequently recognized that the training was contrary to appropriations law restrictions and took action to recover some of the funds, Southwestern did not report the expenditures to the

Department's Office of the Chief Financial Officer as a potential violation of the *Anti-Deficiency Act*, as required. In September 2018, Southwestern reported \$17,349 related to Pathways training costs on the *Improper Payments Elimination and Recovery Act* report for FY 2017.

Covered Relationship

We substantiated the allegation that a covered relationship had existed between Southwestern's former Administrator and the training organization providing the Pathways training. In May 2017, prior to our effort, the Department's Office of the General Counsel and Southwestern's General Counsel jointly determined that, as a volunteer instructor, the former Administrator had a covered relationship. Both General Counsels recommended that he not be involved in recommending or approving Southwestern employees for participation in the Pathways program to ensure that no one questioned his impartiality. In response to this advice, the former Administrator replied to the Department's Office of the General Counsel that he had previously sought legal counsel on the subject and stopped volunteering at the organization "some time ago" to mitigate conflicts of interest before offering the training again to employees. Despite these claims, based on our interviews with several Southwestern employees and other evidence gathered during our review, we determined that employees still questioned the former Administrator's impartiality regarding Pathways.

Under U.S. Code of Federal Regulations, Title 5, Section 2635.502 (5 CFR 2635.502), *Personal and Business Relationships*, an employee has a covered relationship with an organization when the employee is an active participant or spends significant time promoting specific programs of the organization. We confirmed that the former Administrator had a covered relationship beginning in November 2011, when he acted as the Pathways training sponsor for another employee, through at least November 2015, when he became Southwestern's Administrator and reportedly stopped volunteering for the Pathways training organization. Further, we determined that the former Administrator took actions on behalf of Southwestern to promote Pathways during the period that he had a covered relationship, in violation of 5 CFR 2635.502.

Federal employee standards of conduct contain provisions intended to ensure that employees take appropriate steps to avoid an appearance of loss of impartiality in the performance of their official duties. 5 CFR 2635.502 states that employees should seek advice from their supervisor, an agency ethics official, or the agency designee before participating in any matter in which their impartiality could be questioned, including matters involving an employee who has a covered relationship. While attending Pathways in November 2011, the former Administrator, who was Southwestern's Vice-President of Corporate Facilities at the time, committed to sending one of his managers to Pathways each month. Southwestern paid for one employee to begin Pathways in November 2011, but Southwestern cancelled plans to send additional employees to the training due to budget constraints. The former Administrator again planned to send employees in the fall of 2014 and approached Southwestern's General Counsel about his plan. In January 2015, Southwestern's General Counsel advised him to discontinue his Pathways volunteer activities and not send employees to Pathways in the near or intermediate term based on his covered relationship. Southwestern's General Counsel advised that it might then be appropriate to send employees to Pathways for specific, otherwise appropriate and justifiable training, after a significant interval of time elapsed, perhaps 2 to 3 years. However, he encouraged the former

Administrator to check back for legal advice before doing so. The former Administrator did not consult with Southwestern's General Counsel prior to sending staff to Pathways in 2017. In January 2017, the former Administrator notified six of his management staff members that they would be attending Pathways as part of his plan to send all Southwestern managers to the training in the future to address employee improvement of interpersonal and supervisory duties. The Administrator also sent another manager to a refresher course in order to sponsor the employees he would be sending to Pathways.

The former Administrator told us that he did not stop volunteering for the Pathways organization until he became Southwestern's Administrator in November 2015. He also did not end his promotion of Pathways for the suggested 2 to 3 year interval. We discovered emails in July 2016 where the former Administrator was already discussing plans to arrange for an employee to have a sponsor and attend Pathways. According to 5 CFR 2635.502(a), if a reasonable person, knowledgeable of the relevant facts, were to question the employee's impartiality, then the employee should not participate in matters with the organization or obtain prior authorization before doing so. Thus, even an appearance that a covered relationship might exist would preclude participation in matters with the organization without obtaining prior authorization. The former Administrator did not request or receive this authorization.

Contributing Factors

The substantiated allegations occurred because Southwestern officials were not aware of or failed to follow Federal regulations concerning training restrictions and covered relationships. Specifically, Southwestern officials were not aware of the *Section 714(a)* restrictions until the Department's Office of the General Counsel informed Southwestern of the restrictions in March 2017. Additionally, we found that guidance on restrictions for using appropriated funds for inappropriate training was missing in the Department's and Southwestern's training policies. The provisions in *Section 714(a)* were not specifically addressed or referenced in either Southwestern Order 360.1, *Federal Employee Training*, or in Department Order 360.1C, *Federal Employee Training*. Congress had included *Section 714(a)* provisions in annual appropriations laws that apply to all Departments, agencies, and corporations that receive appropriated funds. Further, as previously discussed, although there were policies and procedures in place, the former Administrator did not follow Federal regulations related to his covered relationship with the Pathways organization.

Impact

As a consequence of the substantiated allegations, Southwestern misused \$17,349 in appropriated funds to send employees to Pathways, of which \$1,660 was subsequently recovered. Additional appropriations were potentially misused from the regular hours, overtime, and travel time associated with taking the classes. Additionally, with the appearance of impropriety on the part of the former Administrator who promoted Pathways, employees' trust in their management and the morale of the organization decreased.

Other Matters

During our inspection, we noted that Southwestern officials were not following policy requirements for determining training needs. Specifically, Southwestern did not complete training needs assessments or ensure all employees completed IDPs, as required. The Department's Order 360.1C requires each Department element, including Southwestern, to establish a training policy that incorporates an organizational needs analysis, training plans, needs assessment, resource allocation, design and delivery, evaluation, and reporting processes. Southwestern's Order 360.1 states that the training needs assessments will be conducted annually during the third quarter of each fiscal year and maintained by the Division of Human Resources Management. When we requested the training assessments, we were told that no training assessment records more recent than 2010 could be found. A Southwestern Division of Human Resources official stated that he was not aware that annual training needs assessments were required, other than the expectation for employees to complete an IDP. Southwestern's Deputy Administrator also stated that Southwestern went from having its own human resources staff to a shared service center concept in FY 2017. Southwestern has not revised Southwestern Order 360.1 to address how it will handle the training needs assessments under the reorganization.

Southwestern also did not ensure that its employees completed IDPs, as required. Southwestern's Order 360.1 states that all its employees must have IDPs in place when employees join, change positions, or begin a new performance cycle. IDPs are important as managers review an employee's training needs to identify training priorities for the annual training plan. However, a majority of Southwestern's employees never started work on an IDP in FY 2017. The Deputy Administrator pointed out that the majority of Southwestern's positions are technical in nature and many require a specific amount of training each year for certification purposes. He stated that all training attended is documented even though employees are not required to include these training sessions in their IDPs. Historically, this mandatory training has not been included in the IDP process as it is not part of a development plan.

RECOMMENDATIONS

To address the issues identified in our report, we recommend that the Administrator, Southwestern Power Administration:

1. Update Southwestern Order 360.1 to include the training restrictions in *Federal Budget, General Provisions Government-Wide, Section 714(a)*.
2. Coordinate with the Power Marketing Administration's Shared Service Center to ensure that the process for completing employee IDPs is implemented to help identify training priorities for the annual training plan and each individual's needs.
3. Report the potential violation of the *Anti-Deficiency Act* to the Office of the Chief Financial Officer and take appropriate action if necessary.
4. Ensure that employees are aware of the responsibility to follow regulations related to covered relationships.

We also recommend that the Director, Office of Talent Management, Office of the Chief Human Capital Officer:

5. Update Department Order 360.1C to include the training restrictions in *Federal Budget, General Provisions Government-Wide, Section 714(a)*.

MANAGEMENT RESPONSE

Management concurred with the report's recommendations and indicated that corrective actions had been initiated to address the issues identified in the report. To address our recommendations, management stated that it will coordinate with Power Marketing Administration's Shared Service Center to update Southwestern Order 360.1 to include the training restrictions in *Section 714(a)* and training needs assessment. Additionally, Southwestern is in the process of ensuring all existing employees have completed IDPs for FY 2019. Management will also report the potential violation of the *Anti-Deficiency Act* to the Office of the Chief Financial Officer. Further, Southwestern's General Counsel will supplement mandatory employee annual ethics training with ethics training related to covered relationships. Finally, management stated that the Office of the Chief Human Capital Officer will work to update Department Order 360.1C to address elements of *Section 714(a)* and provide more clarity on the criteria used when evaluating training and employee development activities for approval and funding. Management comments are included in Attachment 3.

INSPECTOR COMMENTS

We consider management's comments and corrective actions to be responsive to our recommendations. We recognize that management has already taken actions to improve its training processes.

Attachments

cc: Deputy Secretary
Chief of Staff
Under Secretary of Energy

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

We conducted this inspection to determine the facts and circumstances surrounding allegations related to Southwestern Power Administration's (Southwestern) procurement of Pathways Core Training (Pathways) for its employees.

SCOPE

We conducted this inspection from October 2017 through February 2019 at Southwestern's Headquarters, located in Tulsa, Oklahoma. The scope of the inspection was limited to the facts and circumstances surrounding a complaint concerning Southwestern's procurement of Pathways for its employees that we summarized into five allegation areas. The inspection was conducted under the Office of Inspector General project code A17CH051.

METHODOLOGY

To accomplish the inspection objective, we:

- Reviewed applicable laws, regulations, orders, guidance, policies, and procedures pertaining to the issues included in the allegations;
- Reviewed related Government Accountability Office and Office of Inspector General prior reports;
- Interviewed officials from Southwestern, the Power Marketing Administration Shared Service Center, and the Department of Energy's Office of the General Counsel;
- Reviewed information available on the Pathways website about curriculum, class location, cost, and schedule of classes;
- Reviewed and analyzed timesheets, invoices, training requests, individual development plans, travel documents, and emails dating back to fiscal year 2011; and
- Reviewed Southwestern's appropriations for fiscal years 2011 through 2017 to obtain amounts for training and any restrictions on use.

We conducted this allegation-based inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it may not necessarily have

disclosed all internal control deficiencies that may have existed at the time of our inspection. Also, we assessed the implementation of the *GPRRA Modernization Act of 2010* and found that the Department of Energy has not established performance measures pertinent to the inspection's objective due to the narrow scope of the allegation. Finally, we relied on computer-based data, to some extent, to satisfy our objective. We conducted a reliability assessment of computer-processed data relevant to our inspection objective by comparing the data to corroborating evidence including source documents. We deemed the data sufficiently reliable for our purposes.

An exit conference was held with management officials on January 31, 2019.

SUMMARY OF ALLEGATIONS

The Office of Inspector General received a complaint related to Southwestern Power Administration's (Southwestern's) procurement of Pathways Core Training (Pathways) for its employees. For the purposes of our review, we summarized the details of the complaint into five distinct allegations.

Allegation	Substantiated (Y/N)
The Pathways training was not appropriate for Southwestern employees.	<u>Y</u>
Appropriated funds were misused.	<u>Y</u>
The former Southwestern Administrator had a covered relationship with the organization providing Pathways training.	<u>Y</u>
Purchasing requirements were not followed.	N
The former Southwestern Administrator inappropriately used personal funds to cover subordinates' training costs.	N


MANAGEMENT COMMENTS



Department of Energy
Southwestern Power Administration
One West Third Street
Tulsa, Oklahoma 74103-3502

January 16, 2019

MEMORANDUM FOR: APRIL STEPHENSON
ACTING INSPECTOR GENERAL
OFFICE OF THE INSPECTOR GENERAL

FROM: MIKE WECH 
ADMINSTRATOR

SUBJECT: Office of Inspector General Draft Inspection Report on "Allegations
Regarding Southwestern Power Administration's Procurement of the
Pathways Core Training" (A17CH051)

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) Draft Inspection Report, "Allegations Regarding Southwestern Power Administration's Procurement of the Pathways Core Training". Southwestern Power Administration (Southwestern) concurs with the OIG Recommendations 1, 2, 3, and 4. Southwestern has attached its management response to the OIG draft inspection report, to this memorandum.

If you have any questions on Southwestern's response, please contact Doug Hart at doug.hart@swpa.gov or by telephone on 918-595-6631.

Also, the Office of the Chief Human Capital (HC) provided its response to Recommendation 5 in the attachment. HC concurred with the recommendation and requested OIG direct any questions concerning Recommendation 5 to John Walsh at john.walsh@hq.doe.gov or by telephone on 202-287-5774.

Attachment

Attachment

Management Responses to the OIG Recommendations Identified in the Draft Inspection Report on “Allegations Regarding Southwestern Power Administration’s Procurement of the Pathways Core Training” (A17CH051)

Recommendation 1: Update Southwestern Order 360.1 to include the training restrictions in *Federal Budget, General Provisions Government-Wide, Section 714(a)*.

Management Response: Concur.

Southwestern will update Order 360.1, in coordination with the Shared Service Center (SSC), to include the training restrictions in Federal Budget, General Provisions Government-Wide, Section 714(a) and training assessments that are to be completed by the SSC. Estimated completion date is June 30, 2019.

Recommendation 2: Coordinate with the Power Marketing Administration’s Shared Service Center to ensure that the process for completing employee IDPs is implemented to help identify training priorities for the annual training plan and each individual’s needs.

Management Response: Concur.

Southwestern is in the process of ensuring all existing employees have completed individual development plans (IDPs) for FY 2019 in the new Learning Nucleus platform, with expected 100% completion no later than January 31, 2019; currently over 98% are complete.

Southwestern will coordinate with the SSC to document that the employee IDP process, the Southwestern training needs assessment, and annual training plan have been implemented through the update to Southwestern Order 360.1, with an estimated completion date of June 30, 2019.

Recommendation 3: Report the potential violation of the *Anti-Deficiency Act* to the Office of the Chief Financial Officer and take appropriate action if necessary.

Management Response: Concur.

Southwestern will report the potential violation of the *Anti-Deficiency Act* to the Office of the Chief Financial Officer with an estimated date of January 31, 2019. The Administrator is committed to resolving this matter and will coordinate with the OCFO regarding any necessary actions.

Recommendation 4: Ensure that employees are aware of the responsibility to follow regulations related to covered relationships.

Management Response: Concur.

Southwestern employees complete mandatory, annual ethics training through the Learning Nucleus each year by the end of October. The Southwestern Office of General Counsel will provide additional ethics training, related to covered relationships, with an estimated completion date of March 31, 2019.

Recommendation 5: Update Department Order 360.1C to include the training restrictions in *Federal Budget, General Provisions Government-Wide, Section 714(a)*.

Management Response: Concur

The Office of the Chief Human Capital Officer (HC) will work to update DOE Order 360.1C to address elements of Section 714(a) of the *Federal Budget, General Provisions Government-Wide* and provide more clarity on the criteria used when evaluating training and employee development activities for approval and funding. HC has targeted June 30, 2019 as an estimated completion date for this action, depending upon the Office of Management and the Directives Review Program schedule.

FEEDBACK

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