

A Collection of Federal Resources Relating to Conferences



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UNITED STATES OFFICE OF
GOVERNMENT ETHICS

— ★ —
Preventing Conflicts of Interest
in the Executive Branch

A Collection of Federal Resources Relating to Conferences

At some point, almost every ethics official has been or will be confronted with a question on conferences. These may range from whether a party may send an invitation to a subject matter expert to attend or speak at an event to questions by a Senior Executive who envisions putting on a symposium in conjunction with professional associations and private sector organizations to address an emerging issue. The ability of ethics counselors to spot and deal effectively with the myriad issues that are embedded in these questions depends on the counselor's breadth of experience – not just in ethics, but in other disciplines as well. Even the most straightforward conference-related scenario can raise appropriations, travel, personnel, contracts, and ethics issues.

This Guide does not, and cannot, answer every question that may arise in connection with conferences. Consequently, the Guide itself is not authoritative. The U.S. Office of Government Ethics (OGE) has no oversight of conferences in general, but questions about conferences often come to the ethics counselors in Federal agencies. The purpose of the Guide is to help the ethics practitioner identify issues both within and outside their area of expertise. Providing insightful analysis of ethics issues is essential, but failing to recognize that a contract attorney or an appropriations expert needs to be consulted could be catastrophic to the agency.

This Guide is an anthology compiling authorities from multiple agencies spanning several disciplines. It is, as its name suggests, a roadmap to decisions, opinions, directives, and instructions that are authoritative for one or more agencies in the Executive Branch. Some agencies have a wealth of experience with diverse and complex conferences. Consequently, their publications and guidance are cited extensively. While not necessarily controlling on other agencies, these references may help other agencies resolve specific issues and, at a minimum, indicate where bright lines do exist.

The first edition of this guide was distributed to attendees at the 2010 OGE National Ethics Conference. In the introduction to that first version of the guide, OGE expressed the hope that agencies would assist OGE in developing and refining the guide. OGE hopes to continue to issue updated guides. To that end, agencies with comments or suggestions should e-mail contactoge@oge.gov.

This guide replaces “Conferences: A Guide for Ethics Counselors” dated May 2010.

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Section A

A Selection of Current Federal Laws, Regulations, and Opinions Governing Issues Related to Conferences

There are numerous Federal acquisition, fiscal, and ethics laws and regulations that apply to the issues often raised by conferences in which the Federal government participates. This list is a selection of those laws and regulations and their interpretation. It is not a comprehensive list of all laws, regulations, and legal opinions pertaining to conferences. OGE cautions ethics officials to perform independent research when trying to answer questions for their agencies regarding conferences.

1 - Government Accountability Office – Excerpts from *The Principles of Federal Appropriations Law* (also known as the Red Book) and GAO Reports

The Government Accountability office (GAO) is the independent, nonpartisan U.S. agency that works for Congress. The Red Book is a three-volume treatise published by GAO concerning federal fiscal law. For more information about GAO, visit their website at: <http://www.gao.gov/>.

GAO Red Book, Vol. 1 3d Ed. Ch. 4, Necessary Expense Doctrine (pp. 4-25 to 4-26) ([PDF](#))
2012 Update, pp. 4-6 to 4-7 ([PDF](#))

GAO Red Book, Vol. 1 3d Ed. Ch. 4, Attendance at Meetings and Conventions (pp. 4-36 to 4-51) ([PDF](#))
(no updates)

GAO Red Book, Vol. 1 3d Ed. Ch. 4, Entertainment (pp. 4-100 to 4-126) ([PDF](#))
2012 Update, pp. 4-10 to 4-18 ([PDF](#))

GAO Red Book, Vol. II 3d Ed. Ch. 6, Update to Anti-Deficiency Act – Obligation/Expenditure (pp. 6-7 to 6-8) ([PDF](#))

GAO Red Book, Vol. II 3d Ed. Ch. 6, Anti-Deficiency Act – Voluntary Services Prohibition (pp. 6-109 to 6-110) ([PDF](#))
2012 Update, pp. 6-11 to 6-12 ([PDF](#))

GAO Red Book, Vol. II 3d Ed. Ch. 6, Augmentation of Appropriations – Fees and Commissions (pp. 6-199 to 6-200) ([PDF](#))
2012 Update, p. 6-22 ([PDF](#))

GAO FAQs about Interagency Transactions, March 2005 Appropriations Law Forum ([PDF](#))

GAO Report: Selected Federal Agencies' Policies for Choosing Conference Locations (GAO-10-677R, June 10, 2010) ([PDF](#)) ([HTML](#)) ([Summary](#))

2 - Comptroller General Decisions and Opinions

The Comptroller General of the United States is the head of the Government Accountability Office (GAO). One of his responsibilities is to issue legal decisions and opinions regarding bid protests, appropriations law, and other issues of federal law. For more information about GAO, visit their website at: <http://www.gao.gov/>.

B-318386 – U.S. Fish and Wildlife Service—Steller’s and Spectacled Eiders Conservation Plan
(August 12, 2009)
([PDF](#)) ([HTML](#))

B-317423 – Use of Appropriated Funds to Purchase Food for Participants in Antiterrorism Exercises (March 9, 2009)
([PDF](#)) ([HTML](#))

B-308968 – No-Cost Contracts for Event Planning Services (November 27, 2007)
([PDF](#)) ([HTML](#))

B-307849 – Pension Benefit Guaranty Corporation—Reimbursement for Financial Analysis Services (March 1, 2007)
([PDF](#)) ([HTML](#))

B-306663 – Contractors Collecting Fees at Agency-Hosted Conferences (January 4, 2006)
([PDF](#)) ([HTML](#))

B-304718 – Veterans Benefits Administration—Refreshments for Focus Groups
(November 9, 2005)
([PDF](#)) ([HTML](#))

B-301184 – U.S. Army Corps of Engineers—Food for a Cultural Awareness Program
(January 15, 2004)
([PDF](#)) ([HTML](#))

B-300826 – National Institutes of Health—Food at Government-Sponsored Conferences
(March 3, 2005)
([PDF](#)) ([HTML](#))

B-300248 – Small Business Administration—Imposition of Oversight Review Fees on PLP Lenders (January 15, 2004)
([PDF](#)) ([HTML](#))

B-290900 – Bureau of Land Management—Payment of Printing Costs (March 18, 2003)
([PDF](#)) ([HTML](#))

B-288266 – Use of Appropriated Funds to Purchase Light Refreshments at Conferences
(January 27, 2003)
([PDF](#)) ([HTML](#))

- B-281063 – Nuclear Regulatory Commission—Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Served at NRC Workshops
(December 1, 1999)
([PDF](#)) ([HTML](#))
- B-262110 – Environmental Protection Agency—Inspector General—Cooperative Agreement versus Procurement (March 19, 1997)
([PDF](#)) ([HTML](#))
- B-260896 – DoD Section 6 School Board Members—Invitational Travel Orders
(October 17, 1996)
([PDF](#)) ([HTML](#))
- B-260260 – Purchase of Baseball Caps by the Department of Energy (December 28, 1995)
([PDF](#)) ([HTML](#))
- B-247563.2 – Expenditures by Department of Veterans Affairs for Rental of Booth Space at State Fair and for Promotional Items (May 12, 1993)
([PDF](#)) ([HTML](#))
- B-247563.3 – Expenditures by Department of Veterans Affairs for Promotional Items
(April 5, 1996)
([PDF](#)) ([HTML](#))
- B-247563.4 – Expenditures for Food by the Department of Veterans Affairs Medical Center
(December 11, 1996)
([PDF](#)) ([HTML](#))
- B-244473 – Coast Guard—Meals at Training Conference (January 13, 1992)
([PDF](#)) ([HTML](#))
- B-243180 (71 Comp.Gen. 9) – Travel Expenses – Security Training for Spouses of FAA Employees (October 4, 1991)
([HTML](#))
- B-242880 – Commission on Interstate Child Support—Payment of Lodging and Meal Expenses of Certain Attendees at the National Conference on Interstate Child Support (March 27, 1991)
Atch to opinion – 102 Stat. 2343
([PDF](#)) ([HTML](#))
- B-238352 (71 Comp. Gen. 6) – Use of Invitational Travel Orders for Military Dependents to Attend Anti-Terrorism Briefings (October 4, 1991)
([HTML](#))
- B-230382 – Decision Concerning Army Payment of Hotel's Claim for Cost of Food and Refreshments (December 22, 1989)
([PDF](#))
- B-229873 – Small Business Administration—Cooperative Agreements and Bona Fide Needs Doctrine (November 29, 1988)
([PDF](#)) ([HTML](#))

B-223319, 65 Comp. Gen. 738 – Refreshments at Awards Ceremony (July 21, 1986)
([PDF](#)) ([HTML](#))

B-218672, 65 Comp. Gen. 16 – Question Concerning the Provision of Meals on Government Aircraft (October 17, 1985)
([PDF](#)) ([HTML](#))

B-210967, 62 Comp. Gen. 531 – Expenditures for Travel and Lodging by the National Highway Traffic Safety Administration (July 8, 1983)
([PDF](#)) ([HTML](#))

B-210620 – Federal Communications Commission—Acceptance of Rent-Free Space and Services Expenses at Trade Shows (June 28, 1984)
([PDF](#)) ([HTML](#))

B-199387 – Army—Food Served at Cultural Awareness Celebration (March 23, 1982)
([PDF](#)) ([HTML](#))

B-193644 – Mine Safety and Health Administration—Payment of Travel Expenses at Seminars (July 2, 1979)
([PDF](#)) ([HTML](#))

B-192323, 57 Comp. Gen. 806 – Refreshments for Jurors (September 20, 1978)
([PDF](#)) ([HTML](#))

B-183110, 55 Comp. Gen. 1332 – Travel Expenses—Honor Awards (July 29, 1976)
([PDF](#)) ([HTML](#))

B-166506, 55 Comp. Gen. 750 – Environmental Protection Agency—Travel Expenses—Convention, conferences, etc—Attendees—State Officials (February 12, 1976)
Prior opinion on this conference was issued July 15, 1975
([HTML](#))

B-124969, 35 Comp. Gen. 198 – Travel Expenses of Delegates to White House Conference on Education (October 7, 1955)
Atch to opinion – 68 Stat. 532
Prior opinion on this conference was issued August 31, 1955 (35 Comp. Gen. 129)
([HTML](#))

3 – Federal Acquisition Regulation (FAR)

The procurement of supplies or services in connection with a conference will be governed by the FAR. The Office of Federal Procurement Policy provides overall direction for government-wide procurement policies, regulations and procedures. The FAR is prepared, issued, and maintained by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration.

Text of the FAR, 48 C.F.R. Parts 1 through 99
([PDF](#)) ([HTML](#)) ([e-CFR Vol 1](#)) ([e-CFR Vol 2](#))

Authority of the FAR: <https://www.acquisition.gov/far/authorityframe.html>

Office of Federal Procurement Policy: http://www.whitehouse.gov/omb/procurement_default
Federal Acquisition Regulatory Council:
http://www.whitehouse.gov/omb/procurement_far_council
Acquisition Central website: <https://www.acquisition.gov/>

4 - Inspector General Reports on Conference Expenditures

The inspectors general of Federal agencies have authority to conduct independent investigations, audits, and inspections relating to programs and operations within their respective agencies and to make recommendations for corrective actions. The reports listed below cover issues related to government conferences.

Department of Homeland Security: Spending Practices and Oversight (November 2009)
([PDF](#))

Department of Justice: Audit of DOJ Conference Planning and Food and Beverage Costs (Revised Version Issued October 2011)
([PDF](#))

Department of Justice: Audit Report 07-42, Chap 8: Registration Fees (September 2007)
([PDF](#)) ([HTML](#))

Department of Veterans Affairs: Administrative Investigation of the FY 2011 Human Resources Conferences in Orlando, Florida (September 2012)
([PDF](#)) ([Summary](#)) ([Information about Redacted Reports](#))

Federal Deposit Insurance Corporation: FDIC Conference-Related Expenses and Activities (March 2012)
([PDF](#))

General Services Administration: Western Regions Conference Report (April 2, 2012)
([PDF](#))

National Aeronautics and Space Administration: Analysis of FY 2009 NASA-Sponsored Conferences (March 23, 2010)
([PDF](#))

Inspectors General Directory and Homepage links
<http://www.ignet.gov/igs/homepage1.html>

5 - Guidance from the Office of Management and Budget

Office of Management and Budget: Promoting Efficient Spending to Support Agency Operations, OMB M-12-20 (May 11, 2012)
([PDF](#))

Office of Management and Budget: Excess Conference Spending and Promoting Efficiency in Government, OMB M-11-35 (September 21, 2011)
([PDF](#))

6 - Statutes

5 U.S.C. §§ 4101-4118 (Government Employees Training Act)

5 U.S.C. § 4101 – Definitions

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 4109 – Expenses of training

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 4110 – Expenses of attendance at meetings

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 4111 – Acceptance of contributions, awards, and other payments

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. §§ 4501- 4509 – Awards for Superior Accomplishments

5 U.S.C. § 4503 – Agency awards

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 5702 – Per diem; employees traveling on official business

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 5703 – Per diem, travel, and transportation expenses; experts and consultants;
individuals serving without pay

[\(PDF\)](#) [\(HTML\)](#)

5 U.S.C. § 5946 – Membership fees; expenses of attendance at meetings; limitations

[\(PDF\)](#) [\(HTML\)](#)

10 U.S.C. § 2262 – Department of Defense conferences: collection of fees to cover Department of
Defense costs

[\(PDF\)](#) [\(HTML\)](#)

10 U.S.C. §§ 2601-2610 (Department of Defense—Acceptance of Gifts and Services)

10 U.S.C. § 2601 – General gift funds

[\(PDF\)](#) [\(HTML\)](#)

10 U.S.C. § 2608 – Acceptance of contributions for defense programs, projects, and activities

[\(PDF\)](#) [\(HTML\)](#)

31 U.S.C. § 1345 – Expenses of meetings

[\(PDF\)](#) [\(HTML\)](#)

31 U.S.C. § 1353 – Acceptance of travel and related expenses from non-Federal sources
([PDF](#)) ([HTML](#))

31 U.S.C. § 3302 (Miscellaneous Receipts Statute) – Custodians of money
([PDF](#)) ([HTML](#))

31 U.S.C. § 6301 – Using procurement contracts, grants, and cooperative agreements; purposes of chapter
([PDF](#)) ([HTML](#))

31 U.S.C. § 6303 – Using procurement contracts
([PDF](#)) ([HTML](#))

31 U.S.C. § 6305 – Using cooperative agreements
([PDF](#)) ([HTML](#))

37 U.S.C. § 455 – Appropriations for travel; may not be used for attendance at certain meetings
([PDF](#)) ([HTML](#))

7 - Code of Federal Regulations

5 C.F.R. § 410.404 – Determining if a conference is a training activity
([PDF](#)) ([XML](#)) ([e-CFR](#))

5 C.F.R. §§ 410.501-503 – Implementing regulation for 5 U.S.C. § 4111
([PDF](#)) ([XML - 501](#)) ([XML - 502](#)) ([XML - 503](#)) ([e-CFR](#))

5 CFR Part 2635 – Standards of Ethical Conduct for Employees of the Executive Branch
([PDF](#)) ([XML](#)) ([e-CFR](#))

13 C.F.R. Part 106 – Small Business Administration regulation on Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities and Gifts
([PDF](#)) ([XML](#)) ([e-CFR](#))

41 C.F.R. Part 301-74 (Federal Travel Regulation) – Conference Planning
([PDF](#)) ([XML](#)) ([e-CFR](#))

41 C.F.R. Appendix E to Chapter 301 (Federal Travel Regulation) – Suggested Guidance for Conference Planning
([PDF](#)) ([XML](#)) ([e-CFR](#))

8 - Joint Federal Travel Regulation/Joint Travel Regulation

Appendix R: Conferences
([PDF](#))

For comparable Federal Travel Regulation provisions, see the two C.F.R. citations to Title 41 in the preceding section.

9 - Opinions of the Office of Legal Counsel of the Department of Justice

Memo for Environmental Protection Agency: Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences (April 5, 2007)
([PDF](#))

Memo for Department of Commerce: Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences (November 22, 2006)
([PDF](#))

Memo for Department of Commerce: Use of Appropriations to Pay Travel Expenses for an International Trade Administration Fellowship Program (October 7, 2004)
([PDF](#))

Memorandum Opinion for Office of Government Ethics: Authority to Solicit Gifts (January 19, 2001)
([HTML](#))

Memorandum for Anthony C. Moscato, Director, Executive Office for United States Attorneys: Reimbursement for Costs of Attending Certain Banquets (September 23, 1993)
([HTML](#))

10 - Agency Regulations/Instructions/Orders

Department of Agriculture: Departmental Regulation (DR) 5200-3, *Gift Acceptance Policy* (April 18, 2003)
([PDF](#)) ([HTML](#))

Department of the Air Force publications website: <http://www.e-publishing.af.mil/>

Department of the Air Force: Air Force Instruction (AFI) 35-105, *Community Relations*, 26 January 2010, paragraphs 8 through 10, 15, and 25 through 28 (Use of Military Aircraft for Events; Flyovers; Speeches and Public Appearances)
([PDF](#))

Department of the Air Force: AFI 35-110, *U.S. Air Force Band Program*, 22 January 2010, paragraphs 6.1 through 6.4 and 8.4 (Performance at Events)
([PDF](#))

Department of the Air Force: Air Force Guidance Memorandum – AFI 36-3003, *Military Leave Program*, 27 April 2012
([PDF](#))

Department of the Air Force: AFI 61-205, *Sponsoring or Co-Sponsoring, Conducting, and Presenting DoD-Related Scientific Papers at Unclassified and Classified Conferences, Symposia, and Other Similar Meetings*, 25 July 1994 (incorporating Change 1, 29 August 2006)
([PDF](#))

Department of the Air Force: AFI 65-601, Vol 1, *Budget Guidance and Procedures*, 16 August 2012, paragraphs 4.11 (Honoraria), 4.28 through 4.30 (Ethnic and Holiday Observances, Traditional Ceremonies, and Entertainment), 4.31 through 4.33 (Awards, Award Ceremonies and Gifts), and 4.50 through 4.55 (Meals, Conferences, Training, and Fees)
([PDF](#))

Department of the Army: Army Directive 2011-20, Conferences (14 October 2011)
([PDF](#))

Department of Defense

DoD Joint Ethics Regulation, 5500.07-R, para. 2-202a – Events Sponsored by States, Local Governments or Civic Organizations

([PDF](#))

(Entire regulation can be found at: http://www.dod.mil/dodgc/defense_ethics/index.html)

DoD Joint Ethics Regulation 5500.07-R, subsection. 3-206 – Co-sponsorship

([PDF](#))

DoD Joint Ethics Regulation 5500.07-R, subsections 3-207 through 3-209 – Participation in Conferences and Similar Events; Distributing Information; Endorsement

([PDF](#))

DoD Joint Ethics Regulation 5500.07-R, subsection 3-211 – Logistical Support of Non-Federal Entity Events

([PDF](#))

DoD Joint Ethics Regulation 5500.07-R, subsection 3-212 – Relationships Governed by Other Authorities

([PDF](#))

DoD Directive 5410.18, *Public Affairs Community Relations Policy*, Chap 4

([PDF](#))

DoD Financial Management Regulation, Volume 12, Chapter 3 – Contributions for Defense Program, Projects, and Activities

([PDF](#))

DoD Financial Management Regulation, Volume 12, Chapter 30 – Operation and Use of General Gift Funds (implementing regulation for 10 U.S.C. § 2601)

([PDF](#))

DoD Financial Management Regulation, Volume 12, Chapter 32 – Collection and Retention of Conference Fees from Non-Federal Sources (implementing regulation for 10 U.S.C. § 2262)

([PDF](#))

General Services Administration: GSA Instructional Letter ADM IL-12-01, Policy on Management and Approval of Conferences and Awards Ceremonies (April 15, 2012)

([HTML](#))

National Aeronautics and Space Administration: NPR 9700.1 Travel, Chapter 2, *Requirements Relating to Conference Attendance and Reporting* (September 30, 2008)
([PDF](#)) ([HTML](#))

11 - Advisory Opinions and DAEOgrams of the U.S. Office of Government Ethics

07 x 8 – Reimbursement of travel expenses incurred as a result of speaking engagements (official or unofficial capacity) (June 28, 2007)
([PDF](#)) ([HTML](#))

06 x 7 – Working with contractors (with attachment) (August 9, 2006)
([PDF](#)) ([HTML](#))

05 x 5 – Prize won at conference attended in an official capacity (August 26, 2005)
([PDF](#)) ([HTML](#))

99 x 7 – Prize won at conference attended in an official capacity (April 26, 1999)
([HTML](#))

98 x 16 – Gift from co-sponsor of conference (October 15, 1998)
([PDF](#)) ([HTML](#))

98 x 14 – Federal employees as speakers at conferences hosted by a non-Federal entity (official or unofficial capacity) (August 31, 1998)
([PDF](#)) ([HTML](#))

96 x 18 – Golf tournament held in connection with conference (October 18, 1996)
([PDF](#)) ([HTML](#))

94 x 14 – Federal employees as speakers at conferences hosted by a non-Federal entity (official capacity) (July 15, 1994)
([PDF](#)) ([HTML](#))

94 x 1 – Federal employees as speakers at conferences hosted by non-Federal entities (official or unofficial capacity) (January 10, 1994)
([PDF](#)) ([HTML](#))

90 x 1 – Federal employees as speakers at luncheons or symposia hosted by non-Federal entities (January 24, 1990)
([PDF](#)) ([HTML](#))

88 x 10 – Federal employees as speakers at conferences hosted by for-profit non-Federal entities (June 16, 1988)
([PDF](#)) ([HTML](#))

DO-10-003: Attendance by Staff Accompanying Official Speakers (February 18, 2010)
([PDF](#)) ([HTML](#))

DO-10-002: Federal Travel Benefits and 18 U.S.C. § 208 (January 28, 2010)
([HTML](#))

DO-09-020: Speeches and Paragraph 2 of the Ethics Pledge; Intergovernmental Personnel Act
Detailees (May 6, 2009)
([PDF](#)) ([HTML](#))

DO-07-047: Widely Attended Gatherings (December 5, 2007)
([PDF](#)) ([HTML](#))

12 - Agency Policies/Memos/Opinions on Conference Issues

Department of Agriculture (Natural Resources Conservation Service): Purchase of Food with
Appropriated Funds (April 9, 2009)
([HTML](#))

Department of the Air Force (Memo from the Secretary of the Air Force): Policy Memorandum –
Conferences (October 28, 2011)
([PDF](#))

Department of the Air Force (Memo from the Secretary of the Air Force): Extension of Air Force
Policy – Conferences (May 9, 2012)
([PDF](#))

Department of Commerce: Using Appropriated Funds to Purchase Food
([HTML](#))

Department of Defense (Memo from Deputy Secretary of Defense): Implementation of Conference
Oversight Requirements and Delegation of Conference Approval Authority (September 29,
2012)
([PDF](#))

Department of Defense (Memo from Secretary of Defense): Consideration of Costs in DoD
Decision-Making (December 27, 2010)
([PDF](#))

Department of Defense (Memo from Deputy Secretary of Defense): Payment of Fees for Guest
Speakers, Lecturers, and Panelists (3 April 2007)
([PDF](#))

Department of Defense (Memo from Under Secretary of Defense): Collection and Retention of
Conference Fees from Non-Federal Sources (12 February 2007)
([PDF](#))

Department of Defense (Memo from the Office of General Counsel): Use of Appropriated Funds
to Purchase Food at Conferences, Meetings, and Events (1 September 2005)
([PDF](#))

Department of Defense Standards of Conduct Office (SOCO) Advisory 09-03: Determining
Reasonable Costs and Incidental Support (23 March 2009)
([PDF](#))

Department of Health and Human Services: Memorandum—HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meetings, Food, Promotional Items, and Printing and Publications (June 7, 2012—update to January 3, 2012 memorandum)
([HTML](#))

Department of Health and Human Services: Memorandum—HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meetings, Food, Promotional Items, and Printing and Publications, including attachments (January 3, 2012)
([HTML](#))

Department of Justice: Food and Beverage Policy for Grants and Cooperative Agreements (September 30, 2011)
([PDF](#))

Department of the Navy (Memo from NAVAIR Weapons Division, Office of Counsel): Funding Guidance for Teammate Appreciation Month (NAWCWD)
([MSWORD](#))
NAVAIR Weapons Division, Office of Counsel website:
<http://www.navair.navy.mil/nawcwg/counsel/ethics/ethi-fr.htm>

Environmental Protection Agency: EPA Ethics Advisory 96-15 (August 17, 1996)
([PDF](#))

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([PDF](#))

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([PDF](#))

National Aeronautics and Space Administration (Memo from Administrator): Planning Agency-Sponsored Events (November 16, 2005)
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13 - Agency Papers/Presentations and Analytical Aids

Department of the Air Force: Doing the Right Thing—Fiscal Law Tips: Dealing with Conferences, Coins, and the Use of Government Resources (published in *Armed Forces Comptroller*)
([PDF](#))

Department of the Army (JAG School): Relations with Non-Federal Entities, Official and Personal (July 2009)
([PDF](#))

Department of Defense (outline, 8th Ethics Counselor's Course at the Army JAG School): Conference Sponsorship and Conference Planning: Relevant Ethics and Fiscal Issues
([PDF](#))

Department of Defense (powerpoint presentation, 10th Ethics Counselor's Course at the Army JAG School): Conferences
([PPTX](#))

Department of Defense (powerpoint presentation by National Guard, 10th Ethics Counselor's Course at the Army JAG School): Conference Planning
([PDF](#))

Department of Defense (outline, 10th Ethics Counselor's Course at the Army JAG School): Fiscal Law Overview
([PDF](#))

Department of Defense: Ethics Counselor's Deskbook
([HTML](#))

Environmental Protection Agency (powerpoint presentation): Professional Associations (undated)
([PPTX](#))

GAO Food Tree (powerpoint presentation): Can Your Agency Use Appropriated Funds for Meals and Light Refreshments? (March 10, 2011)
([PDF](#)) ([Summary](#))

GAO Paper: FAQs on No-Cost Contracts, 2008 Appropriations Law Forum (March 13, 2008)
([PDF](#))

GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities), 2006 Appropriations Law Forum (April 2006)
([PDF](#))

14 - Agency Guides

Department of Health and Human Services: Agency Gift Acceptance Authorities and the Co-Sponsorship of Events with Outside Non-Federal Entities (August 8, 2002)
([PDF](#))

Department of Health and Human Services: Co-sponsorship Guidance (August 8, 2002)
([PDF](#))

Environmental Protection Agency's Best Practices Guide for Conferences (November 12, 1998)
([HTML](#))

General Services Administration: Frequently Asked Questions – Conference Planning Guidance
([HTML](#))

National Institutes of Health: Policy on Efficient Spending Related to Grants Supporting Conferences and Meetings, Notice Number NOT-OD-12-041 (January 27, 2012)
([HTML](#))

National Institutes of Health Policy Manual 6031: Conference Support/Collection and Retention of Registration Fees (last updated May 7, 2008)

[\(PDF\)](#) [\(HTML\)](#)

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[\(PDF\)](#) [\(HTML\)](#)

Office of Personnel Management: Training Policy Handbook, Expenses Related to Training (undated)

[\(HTML\)](#)

Small Business Administration: Outreach Activities (guide for co-sponsored activities)

(April 27, 2007)

[\(PDF\)](#)

U.S. Geological Survey Instructional Memorandum, No. OFM 2001-05: Conference Planning Allowance and Refreshments Involving Travel (September 7, 2001)

[\(HTML\)](#)

15 - Model Documents and Formats from Agencies

Department of the Air Force: Model Co-Sponsorship Agreement (undated)

[\(PDF\)](#)

Department of Health and Human Services: Model Co-Sponsorship Agreement (August 8, 2002)

[\(MS Word\)](#)

Environmental Protection Agency: Model Co-Sponsorship Agreement (undated)

[\(PDF\)](#)

Environmental Protection Agency: No Cost Contracts for Event Planning Services

(January 29, 2008)

[\(PDF\)](#)

Section B

Chapter 1: Introduction

1.0 Recent Guidance

The purpose of this guide is to assist ethics officials with analyzing the fiscal, procurement, and ethics issues that often arise when a Government employee plans or participates in a conference. This guide does not address the policy question of whether an agency should host, co-host, or participate in a conference in the first place. With regard to those issues, ethics officials should ensure that senior employees in their agency are aware of two memoranda from the Office of Management and Budget (OMB) about reducing Government spending, including spending on conferences. OMB may issue additional memoranda after the publication of this guide. Subsequent OMB guidance will control over any contrary information in this guide.

On September 21, 2011, OMB issued a memorandum¹ to the heads of executive branch departments and agencies addressing spending by the Federal Government on conferences. The memorandum directed these officials to review the policies and controls associated with conference-related activities and expenses and to report what actions their agencies could take to reduce the costs of conferences and improve Government performance. Additionally, the memorandum required that until the Deputy Secretary (or equivalent) could certify that appropriate policies and controls were in place “to mitigate the risk of inappropriate spending practices with regard to conferences,” approval of conference-related activities and expenses must be cleared through the Deputy Secretary (or equivalent) of an agency.

On May 11, 2012, OMB issued a memorandum² describing policies and practices that agencies must implement in order to reduce their spending in four areas, including spending related to conferences. OMB directed agencies to look at the expenses related to conference sponsorship and hosting and the attendance of Federal employees at conferences sponsored by non-Federal entities. The memorandum outlines the following new policies and procedures that agencies must follow:

- Deputy Secretaries (or their equivalent) must review planned spending for each conference that is to be sponsored or hosted by the agency or other Federal or non-Federal entity when the net conference expenses will exceed \$100,000.
- Deputy Secretaries (or their equivalent) must approve spending for proposed new conferences to be sponsored or hosted by the agency when the net expenses for the agency will be in excess of \$100,000.
- Agencies are prohibited from incurring net expenses in excess of \$500,000 from their own funds for one conference. The agency head may waive this policy in cases of “exceptional circumstances.”

¹ OMB Memorandum M-11-35, *Eliminating Excess Conference Spending and Promoting Efficiency in Government*, September 21, 2011.

² OMB Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations*, May 11, 2012.

- Agencies must report their expenses, along with other specified information, about conferences that they held in the previous year. The information must be available on an agency’s official website.

OMB reminds agencies to ensure that their conference expenses and activities comply with the Federal Travel Regulations and the Federal Acquisition Regulation requirements regarding contracting for goods and services, lodging, food and beverages, and per diem reimbursement.

1.1 Is the Event a “Conference”?

Formal Conference vs. Conference vs. Training vs. Meeting vs. Convention vs. Award Ceremony vs. Regularly Scheduled Courses of Instruction Conducted at a Government or Commercial Training Facility. When an agency employee embarks on a plan to hold an event such as those listed above, he or she may use any number of terms to describe the event. Statutes, regulations, and Comptroller General opinions distinguish among many different types of events, but not all terms are defined and not all sources are consistent. The structure of the event, not the label your client gives it, is what determines what laws and regulations apply to the event. As a result, gather the facts and then consider the activity or structure that is being described by the client in order to determine which laws and regulations apply.

The first step is to understand that not all terms used to describe conferences and the vehicles for carrying them out, such as co-sponsorship or partnerships, are defined in law. Below are some of the terms that have been defined by statute or regulation. When OGE uses these terms in this guide, it is using them in the sense that they are used in these statutes or regulations.

The Government Accountability Office (GAO) has stated that a formal conference “typically involves topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participants.” *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 2 (March 3, 2005). Indicia of a formal conference are registration, a published substantive agenda, and scheduled speakers or discussion panels. *See id.* at 6.

On the other hand, GAO describes a meeting as a gathering that discusses “business matters internal to an agency or other topics that have little relevance outside of the agency.” B-300826 at 6. Examples of these are day-long quarterly supervisors’ meetings discussing general/business management topics, suggestions, issues, and problems of the agency. *Corps of Engineers—Use of Appropriated Funds to Pay for Meals*, 72 Comp. Gen. 178, B-249795 (May 12, 1993). According to GAO, meetings that have these characteristics do not constitute formal conferences. *See id.* at 6.

Also note that some agencies believe GAO recognizes a meeting exception. In response to a request for clarification, GAO stated the exception is not to the definition of “meeting” but is instead related to its location. *Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Served at NRC Workshops*, 1999 U.S. Comp. Gen. LEXIS 245, B-281063 (December 1, 1999).³

³ GAO held that, notwithstanding the general prohibition against serving food to employees within their official duty station, an agency holding an internal meeting off-site may pay, under limited circumstances, a facility rental fee that includes the cost of food provided to agency employees. The payment was not improper because the fee was all-inclusive, not negotiable, and competitively priced to those venues that did not include food.

The Government Employees Training Act (GETA), 5 U.S.C. §§ 4101-4118, allows an agency to collect and retain a fee to offset costs associated with training the employees of another agency. The term “training” as used in 5 U.S.C. § 4101 refers to “making available to an employee . . . a planned, prepared, and coordinated program . . . of instruction or education, in scientific, professional . . . fields which will improve individual and organizational performance goals.” Some conferences may qualify as training. See 5 C.F.R. § 410.404. However, the GETA does not apply to all categories of Federal employees. For example, it does not apply to foreign service personnel or military personnel in certain circumstances. Before relying on the GETA, confirm that it applies to your client.

1.2 How Do You Determine Whose Conference It Is?

To begin your analysis of any conference question you receive, it is helpful first to classify the conference as one of three types: a conference that an agency co-sponsors with a non-Federal entity; a conference hosted by a non-Federal entity; or a conference hosted by a Federal agency.⁴ Statutes and regulations that apply to one type of conference may not apply to another type. OGE has divided this guide into three sections corresponding to these three types.

How do you determine what type of conference is the subject of the questions you receive? Should you simply ask the person who has come to you for advice? Definitely not. Do not allow the client to limit or structure your analysis by placing too much importance on the terminology he or she uses. Instead, conduct your own analysis in order to determine what type of event will be held. The process that the Environmental Protection Agency (EPA) uses may be helpful to other agencies. See the EPA’s *Best Practices Guide for Conferences* (November 28, 1998). The analysis it employs consists of two basic questions:

- 1) **What is the purpose of the conference?**
- 2) **Who is in control of the planning of the conference and the agenda?**

The EPA has composed a series of “decision indicators” for each of the questions to help the agency determine what type of conference is involved. For purposes of this guide, OGE has adapted the EPA’s “decision indicators” for use by any Federal agency. See the table on the following page.

Funding can be an indicator of who the host of a conference is. However, no one factor is determinative as to “ownership” of a conference.

⁴ Conferences co-hosted with other Federal agencies are not covered in this guide. OGE will consider adding this topic in a future edition of this guide.

Table 1: WHOSE CONFERENCE IS IT?
(adapted from EPA conference guide) ([html version](#))

	Purpose of Conference	Control	Attendees
Co-Sponsored	<ul style="list-style-type: none"> - advance the mission of the Federal agency where the non-Federal entity shares a mutual interest in the subject matter of the event and possesses expertise that adds substantive value to the purpose of the event; or - develop products for goals common to the Federal agency and non-Federal entity. 	<p>Decisions are shared among the parties to the conference, including control of:</p> <ul style="list-style-type: none"> - agenda planning, - speaker selection, - location selection, and - conference logistics. 	<p>Must be open to both Federal employees and members of the interested public.</p>
Non-Federal Entity	<ul style="list-style-type: none"> - discuss, evaluate, or plan the non-Federal entity's initiatives; - share information on issues of interest to the non-Federal entity; - support or stimulate public awareness of the non-Federal entity's issues; - facilitate informed public dialogue on issues of interest to the non-Federal entity; - enhance management of programs of the non-Federal entity; or - fundraising. 	<p>The non-Federal entity expects to control:</p> <ul style="list-style-type: none"> - the agenda; - the selection of speakers, panelists and/or attendees; and - the duration, dates, and location of the meeting. 	<p>May be open to both Federal employees and members of the interested public.</p>
Federal Entity	<ul style="list-style-type: none"> - discuss, evaluate, or plan a specific agency activity or program; - advise the agency on its operations (e.g. FACA); - solicit public or stakeholder input to official agency actions or policy; - develop official agency positions; - train agency staff or other direct implementers of agency regulations; - generate information to be incorporated directly into official agency positions, such as policy, regulations, or guidance; - propose, announce, or explain agency actions; or - disseminate mandated information. 	<p>The agency expects to control:</p> <ul style="list-style-type: none"> - the agenda; - the selection of speakers, panelists, and/or attendees; and - the duration, date, and location of the meeting. 	<p>May be open to both Federal employees and members of the interested public.</p>

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Chapter 2: Conferences Co-Sponsored with Non-Federal Entities

2.0 Introduction: What is Co-Sponsorship?

One of the difficulties in developing guidance on co-sponsored conferences is that there is no single statutory or regulatory definition of “co-sponsorship” that applies throughout the executive branch. The term may have different meanings in different agencies. The definitions of “co-sponsored conference” used by several agencies contain several common factors:

- 1) The purpose of the conference is for the agency and the non-Federal entity to:
 - advance the mission of the Federal agency where the non-Federal entity shares a mutual interest in the subject matter of the event and possesses expertise that adds substantive value to the purpose of the event; or
 - develop products for goals common to the Federal agency and non-Federal entity.
- 2) Decisions are shared among the parties to the conference, including control of:
 - agenda planning,
 - speaker selection,
 - location selection, and
 - conference logistics.
- 3) Participation in the event must be open to both Federal employees and members of the interested public. If participation is limited to Federal employees only, a co-sponsorship is not an appropriate arrangement to use to organize the event. This description of co-sponsorship excludes an arrangement in which the non-Federal entity provides funding only and does not participate in developing the substantive parts of the conference.

Although there is no single definition of co-sponsorship applicable throughout the Executive Branch, some agencies have definitions that apply within the agency. The Small Business Administration (SBA)⁵ defines a “cosponsored activity” as “an activity, event, project or initiative, designed to provide assistance for the benefit of small business as authorized by section 4(h) of the Small Business Act, which has been set forth in an approved written Cosponsorship Agreement.”⁶

The Department of Health and Human Services (HHS) describes co-sponsorship as “the joint development of a conference, seminar, symposium, education program, public information campaign, or similar event related to the mission of the Department by HHS and one or more non-Federal entities that share a mutual interest in the subject matter.”⁷ Under this definition, HHS must assist in the development of substantive content for the conference and not merely be a provider of logistical support for the conference.

⁵ For some agencies, like the SBA, a statute will set forth the requirements that an event must meet in order to be co-sponsored activity. See 15 U.S.C. § 633(h).

⁶ 13 C.F.R. § 106.101(b).

⁷ *Co-Sponsorship Guidance*, Department of Health and Human Services, Office of the General Counsel (August 8, 2002).

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The Department of Defense (DoD) has defined the term “co-sponsorship” in a regulation, the Joint Ethics Regulation (JER), DoD 5500.07-R. Under DoD’s definition, a DoD Component command or organization may serve as an event co-sponsor under either of the following circumstances:

- 1) The DoD Component or command is one of the organizations that develops the substantive aspects of the event, or
- 2) The DoD Component command or organization is one of the organizations that provides substantial logistical support for the event.⁸

DoD’s definition is broader than the definition used by HHS. Unlike HHS, a DoD component or command may co-sponsor an event although the DoD entity provides only logistical support.

DoD imposes specific restrictions on both types of co-sponsorship of a conference. All of the following criteria, which are listed in subsection 3-206b, must be met:

- The head of the DoD Component command or organization must find that the subject matter of the event (or co-sponsored discrete portion) concerns scientific, technical or professional issues that are relevant to the mission of the DoD Component command or organization;
- The head of the DoD Component command or organization must find that the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues identified above;
- The head of the DoD Component command or organization must find that the event is open to interested parties;
- The non-Federal entity is a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component DAEO, giving due consideration to the prohibition against preferential treatment to non-Federal entity in 5 C.F.R. § 2635.101(b)(8);
- The DoD Component command or organization accomplishes the co-sponsorship through a written agreement that includes:
 - the nature and purposes of the event;
 - the undertakings and the liabilities of the parties;
 - funding responsibilities and costs (including admission fees);
 - a disclaimer of Government liability if the DoD Component command or organization reduces the level of its participation or completely withdraws; and
 - a statement that the non-Federal entity will not use the fact of co-sponsorship to imply DoD endorsement of the organization or its other events;
- No admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for a co-sponsored event; and
- No admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for the discrete portions of the event co-sponsored by the DoD Component.

⁸ DoD Joint Ethics Regulation, subsection 3-206.

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As demonstrated by the definitions and criteria used by the SBA, HHS, and DoD, co-sponsorship will differ from agency to agency.

2.1 Organizing a Conference Co-Sponsored with a Non-Federal Entity

Generally, an agency does not need “express statutory authority to host a conference, so long as the agency determines that a formal conference is reasonably and logically related to carrying out its statutory responsibilities and serves its statutory mission.” *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 3 (March 3, 2005). Similarly, an agency does not need express statutory authority to work with a non-Federal entity to present a conference, as long as the conference/co-sponsorship furthers the agency’s mission.

Although an agency does not need express statutory authority to host or co-sponsor a conference, a Federal agency or department may have regulations that govern conferences. For example, the U.S. Air Force has a regulation that sets forth the procedures for sponsoring, co-sponsoring, or participating in conferences or symposia whose purpose is the presentation of DoD-related scientific and technical information, both classified and unclassified. See Air Force Instruction (AFI) 61-205, *Sponsoring or Co-Sponsoring, Conducting, and Presenting DoD-Related Scientific Papers at Unclassified and Classified Conferences, Symposia, and Other Similar Meetings* (25 July 1994). When answering questions about conferences, the agency ethics official should look for any agency-specific guidance in addition to the resources cited in this guide.

2.1.1 Use of a contract

2.1.1.1 Contract under the Federal Acquisition Regulation

An agency may enter into a contract in order to co-sponsor a conference with a non-Federal entity. Executive branch agencies are directed to use contracts when “the principal purpose is to acquire . . . property or services for the direct benefit or use of the . . . government.”⁹ A contract is a proper vehicle in situations in which the federal agency is acquiring conference planning services.

In determining when to use a contract as a vehicle for holding a conference, agency ethics officials should direct clients to their procurement office. As emphasized in OMB memoranda,¹⁰ the procedures set forth in the Federal Acquisition Regulation must be followed when an agency seeks to award a contract.

2.1.1.2 No-cost contract

The executive branch Standards of Ethical Conduct¹¹ do not address the issue of the use of a no-cost contract with a co-sponsor, but agencies should not use a no-cost contract to avoid the federal procurement process. See 4.1.1.2 of this guide for an in-depth discussion of the use of no-cost contracts in conjunction with a conference, including a GAO opinion on the matter.

⁹ 31 U.S.C. § 6303.

¹⁰ OMB Memorandum M-12-20 (May 11, 2012) and OMB Memorandum M-11-35 (September 21, 2011).

¹¹ 5 C.F.R. Part 2635.

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2.1.2 Use of a memorandum of understanding

In developing this section, OGE learned that some agencies discourage the use of a memorandum of understanding (MOU) or a memorandum of agreement (MOA) to document the terms of a co-sponsorship. The concern in using either of these vehicles is that the agreements have no real legal force behind them. However, individuals purporting to bind the Government by entering into MOUs may in fact exceed their legal authority, technically binding the Government and creating an unauthorized commitment of appropriated funds.

HHS and the Air Force have provided OGE with model co-sponsorship agreements (see the attachments to this chapter). The models provided to OGE most closely resemble memoranda of understanding, although both documents are simply labeled “co-sponsorship agreement.”

2.1.3 Use of a cooperative agreement

This guide uses the term “cooperative agreement” as it is referred to in the Federal Grant and Cooperative Act of 1977, 31 U.S.C. §§ 6301-6308.

Not every agency has authority to use a cooperative agreement. According to GAO, an agency needs authority to enter into a cooperative agreement because it is an assistance arrangement that contemplates “active involvement” by the Federal agency. *See GAO Principles of Federal Appropriations Law* (Red Book), at ch. 10, Pt. B(2) (3d ed. 2004); *see also GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities)*, presented at the 2006 Appropriations Law Forum. 31 U.S.C. § 6305 does not itself serve as authority for an agency to enter into cooperative agreements. That authority must be found in a statute other than 31 U.S.C. § 6305, for example, in an agency’s appropriations act. *Bureau of Land Management—Payment of Printing Costs by the Milwaukee Field Office*, 2003 U.S. Comp. Gen. LEXIS 241, B-290900 (March 18, 2003). *See also Small Business Administration Questions about Funding of Small Business Development Centers*, B-229873 (November 29, 1988). (Pursuant to 15 U.S.C. § 648, the Small Business Administration is authorized to use cooperative agreements in establishing Small Business Development Centers in 15 U.S.C. § 648.) In the absence of specific authorization such as this, an agency will not be able to use a cooperative agreement. The Inspector General of the Department of Justice found in one instance that agency regulations relating to a specific program did not allow for a cooperative agreement between the Federal agency and a for-profit entity.¹²

For those agencies that do have authority to use cooperative agreements, this guide, as mentioned above, uses the term “cooperative agreements” as it is referred to in the Federal Grant and Cooperative Act of 1977, 31 U.S.C. §§ 6301-6308. When the principal purpose of the agreement is to transfer a thing of value to the recipient to carry out a public purpose of support authorized by a U.S. law and substantial involvement is expected between the Federal Government and the other entity, a cooperative agreement is an appropriate instrument to use.

The “substantial involvement” required by the statute dovetails with the requirement of a co-sponsorship that both the Federal agency and the non-Federal entity contribute in developing the subject matter of the event. “Substantial involvement” by both entities can include preparing the agenda and the topics for discussion and contributing panel members for sessions at the event. If

¹² *See* DOJ Conference Expenditures, Office of Inspector General (OIG), Audit Report 07-42, ch. 8 (September 2007).

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these elements are missing, the event is not a candidate for a cooperative agreement, nor is it a suitable candidate for a co-sponsorship.

The other requirement in the statute is that the Federal agency transfer a thing of value (which can include funds) to the non-Federal entity to carry out a public purpose supported by the U.S. GAO interprets this to mean that a Federal agency may use a cooperative agreement to help organize a non-Federal entity's conference, but a Federal agency may not use a cooperative agreement if it is seeking assistance from a non-Federal entity to help organize an agency-sponsored conference. See *GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities)*, presented at the 2006 Appropriations Law Forum.

In the latter situation, GAO states that the agency should use a "co-sponsorship agreement." This position highlights how different Government entities have different definitions of key terms such as co-sponsorship. GAO views cooperative agreements and co-sponsorship agreements to be different instruments for organizing a conference. The authors of this guide, for purposes of the broader discussion of conferences, view a cooperative agreement as one method by which an agency and a non-Federal entity may memorialize some co-sponsorship arrangements. In a co-sponsorship, both entities will be substantially involved in the development of the conference. In the case of a co-sponsored conference, the principal purpose of the agreement to co-sponsor may be for the agency to transfer a thing of value to the non-Federal agency to carry out a public purpose of support authorized by a U.S. law.

In its guide on conferences, the EPA addresses the issue of the proper document or combination of documents to use to arrange or organize, not only a co-sponsored conference, but also the other two types of conferences. See *Best Practices Guide for Conferences*, EPA Guide, (November 28, 1998). The EPA uses the term "assistance agreement" to refer to grants and cooperative agreements. For co-sponsored conferences, the EPA advises its employees that, if they are considering an assistance agreement, they should use a cooperative agreement rather than a grant.

2.1.4 Use of a partnership

In a paper prepared for one of its Appropriations Law Forums, GAO noted that it was "unaware of any universally accepted definition of 'public-private partnership.' The term is commonly used to describe an arrangement where a public entity, such as a federal agency, and a private entity, such as a professional organization, a non-profit corporation, or even a for-profit corporation, marshal their resources or 'partner' to achieve a mutual, or consistent goal." See *GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities)*, presented at the 2006 Appropriations Law Forum.

In its paper, GAO seems to use the term "public-private partnership" as a general term to encompass cooperative agreements, contracts, and other arrangements rather than as another method to document a co-sponsorship. Although OGE has decided not to use the term in this manner, OGE recommends that agencies review the GAO paper for the discussion of grants, cooperative agreements, no-cost contracts, and co-sponsorship, and for its citations to Comptroller General decisions.

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2.2 Permissible Actions in Seeking Qualified Co-Sponsors

2.2.1 General

Some agencies may have the authority to actively seek out qualified co-sponsors for a contemplated event.¹³ There are, however, two areas of concern with respect to the recruitment of potential co-sponsors: the appearance of coercion and the appearance of favoritism.

2.2.2 Appearance of coercion

The agency must be careful to avoid any appearance that it is coercing an outside entity to become a co-sponsor. This appearance is most likely to arise when the agency solicits potential co-sponsors who have interests that could be affected significantly by pending agency action. Therefore, great care should be taken when the agency actively solicits "prohibited sources" to become co-sponsors. Where practicable, for example, agency personnel who participate substantially in official matters affecting a non-Federal entity should not be the ones to make overtures toward that entity about a possible co-sponsorship. 5 C.F.R. § 2635.101; Joint Ethics Regulation, DoD 5500.07-R, subsection 3-206(b)(3); *Co-Sponsorship Guidance*, Department of Health and Human Services, Office of the General Counsel, at 8 (August 8, 2002).

2.2.3 Appearance of favoritism

An agency must also be careful to avoid the appearance that it is showing favoritism by approaching only certain entities, when other qualified entities could derive a benefit from entering into the particular co-sponsorship with the agency. Where practicable, the agency should make the opportunity for a co-sponsorship known to all similarly situated entities. In some instances, for example, HHS has published a Federal Register notice to announce the opportunity for a co-sponsorship. For some events, it may not be feasible to engage more than one co-sponsor or even to make the opportunity for a co-sponsorship known to all qualified entities. At the very least, however, the agency must be able to articulate a reasonable basis for limiting its field of prospective co-sponsors. *See HHS Co-Sponsorship Guidance* at 8.

2.3 Potential Co-Sponsors

2.3.1 Contributor of funds or logistical support

An agency may not enter into a co-sponsorship with a non-Federal entity that would contribute funding, logistical services, or other material support for an event, but that would not participate in the development of the substantive aspects of the event. Such a contribution alone could constitute an augmentation of appropriations and may not be accepted, unless authorized by an applicable agency gift acceptance statute or other statutory authority. *See HHS Co-Sponsorship Guidance*.

¹³ Some agencies may not have the authority to solicit co-sponsors of a conference. The HHS Office of the General Counsel has issued guidance stating that its employees do have the authority to solicit co-sponsors.

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According to the Comptroller General,

“Although there is no express statutory prohibition against augmentation of appropriated funds, the theory, propounded by the accounting officers of the Government since the earliest days of our nation, is designed to implement the constitutional prerogative of the Congress to exercise the power of the purse; that is, to restrict executive spending to the amounts appropriated by the Congress. . . .

If contributions or donations from outside sources are made to Government agencies, in the absence of statutory authority to retain them, they must be deposited promptly in the general fund of the Treasury. 31 U.S.C. § 3302.”

Federal Communications Commission—Acceptance of Rent-Free Space and Services at Expositions and Trade Shows, 63 Comp. Gen. 459, B-210620 at 3 (June 28, 1984).

Many, but not all, agencies have gift acceptance authority that allows the lawful augmentation of appropriations. DoD, for example, has gift acceptance authority and may accept property, limited services, and money in connection with a conference. 10 U.S.C. §§ 2601-2608. DoD Financial Management Regulation 7000.14-R, vol. 12, ch. 30 is the implementing regulation for the statute. The regulation, at section 3005, prohibits the acceptance of gifts under certain conditions. Conference planners must keep these limitations in mind when evaluating an offer of property, services, or money from a non-Federal entity. DoD acceptance authorities must decline gifts under the following circumstances:

- the use of the gift is in connection with any program, project, or activity that would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;
- the gift or conditions attached to the gift are inconsistent with applicable law or regulations;
- the use of the gift would reflect unfavorably on the ability of DoD or any personnel of DoD to carry out any responsibility or duty in a fair and objective manner;
- the use of the gift would compromise the integrity or would appear to compromise the integrity of any program of DoD or any individual involved in such a program;
- acceptance of the gift would not be in the best interest of DoD where the gift creates or requires, for example, the appearance or expectation of favorable consideration as a result of the gift; the appearance of an improper endorsement of the donor, its events, products, services, or enterprises; or a serious question of impropriety in light of the donor’s present or prospective business relationships with DoD.

The regulation also prohibits DoD from accepting gifts offered indirectly through an intermediary if it could not accept the gifts directly from the source (paragraph 300506). There are further restrictions on the acceptance of gifts from foreign governments and international organizations (paragraph 300507(B)). If the gift from a potential co-sponsor is valued in excess of

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\$10,000, the acceptance authority must consult with the ethics counselor to, among other things, ensure that the “donor does not have interests that may be affected substantially by the performance or nonperformance of the Department of Defense employee’s official duties.” Paragraph 300507(A).

GAO has determined that on rare occasions agencies may accept offers of rent-free space and incidental services at expositions or trade shows if to do so would promote the mission of the agency. *Federal Communications Commission—Acceptance of Rent-Free Space and Services Expenses at Trade Shows*, 63 Comp. Gen. 459, B-210620 (June 28, 1984). The acceptance of such space and services was not deemed to be an impermissible augmentation of the agency’s appropriations because no donation of money had been given or received. *Id.* at 3-4.

2.3.2 Contributor with lack of substantive interest

Depending upon internal agency guidance, an agency may not enter into a co-sponsorship with a non-Federal entity that does not have a demonstrable substantive interest in the subject matter of the event. Although such an entity is not a permissible co-sponsor, an agency may be able to accept a contribution of goods or services under an applicable agency gift acceptance statute or other statutory authority. *See HHS Co-Sponsorship Guidance.*

2.3.3 Co-sponsor created for event

As a general rule, an agency should not co-sponsor an event with an entity created solely for involvement in that particular event. In exceptional cases, however, special circumstances or agency needs may reasonably require a co-sponsorship with an entity that is newly created for the purpose of developing the event. In such cases, the agency must exercise special caution to ensure that the new entity is not merely a vehicle for other persons or organizations that would be inappropriate co-sponsors themselves. *See HHS Co-Sponsorship Guidance.*

2.3.4 Prohibited sources

Any proposed co-sponsorship with an entity that would be deemed a "prohibited source," under the Standards of Ethical Conduct for Employees of the Executive Branch, should be reviewed with particular care. A "prohibited source" for an executive branch employee is defined in 5 C.F.R. § 2635.203(d) as any person or entity who:

- 1) is seeking official action by the employee’s agency;
- 2) does business or seeks to do business with that agency;
- 3) conducts activities regulated by that agency;
- 4) has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties; or
- 5) is an organization the majority of whose members are described in (1) through (4) above.

An agency must weigh the appearance of a conflict of interest against the importance of working with a given prohibited source as a co-sponsor. The agency should consider any facts that have a bearing on either the severity of the apparent conflict or the degree of benefit to the agency from working with a particular prohibited source. Factors to consider are:¹⁴

¹⁴ *See HHS Co-Sponsorship Guidance.*

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- Is the event one which serves an important agency mission?
- Is there another available co-sponsor that is not a prohibited source, or does the prohibited source have a special expertise or status that would make it the preferred co-sponsor of the event?
- What would be the nature of the prohibited source's involvement in the event? To what extent will the prohibited source take an active and important role in the development of the substantive portions of the event?
- Would co-sponsoring an event with the prohibited source create the appearance of partiality toward that source or the appearance of an endorsement of that source with respect to other matters that it has pending before the Government?
- Does the prohibited source regularly apply for contracts, grants, or other financial relationships with the agency component co-sponsoring the event? Do grants, contracts, or other financial relationships with the agency component represent a significant percentage of the source's overall budget?¹⁵
- Are significant activities of the prohibited source regulated by the agency component co-sponsoring the event? If so, the agency component may not co-sponsor an event with that prohibited source unless the benefits to the agency clearly outweigh any potential appearance of undue influence or preferential treatment.

Some agencies may have lists of prohibited sources for their agencies. For example, DoD components should refer to the DoD contractor list on DoD SOCO's website and also any list that their local contracting office maintains. See U.S. Department of Defense Standards of Conduct Office website, http://www.dod.gov/dodgc/defense_ethics/.

2.3.5 Specific agency restrictions

Some agencies have restrictions on specific types of conferences. For example, the Air Force, in AFI 61-205, sets forth specific procedures for sponsoring or co-sponsoring classified and unclassified conferences at which DoD-related scientific papers are presented. Air Force personnel must follow this regulation, in addition to fiscal law and ethics requirements, when the conference falls into this category.

2.4 Publicity/Promotion

2.4.1 Endorsement concerns

Some agencies have specific guidance on issues related to marketing and promotion of co-sponsored activities. When searching for this guidance, public affairs offices are a good starting point.

The Small Business Administration (SBA) has well-developed guidance on publicity for the agency. The SBA must receive appropriate recognition in all material produced pursuant to the

¹⁵ HHS has established a policy for its components that if either of these is the case, the Department component may not co-sponsor an event with that prohibited source unless the benefits to the agency clearly outweigh any potential appearance of undue influence or preferential treatment.

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co-sponsored activity, including use of SBA's logo. Once a co-sponsored activity has been approved, the co-sponsor may use its name in connection with SBA's only in factual publicity for that specific co-sponsored activity. Factual publicity includes dates, times, locations, purposes, agendas, fees, and speakers involved with the activity. Such factual publicity should not imply that the involvement of SBA in the event is an endorsement of the general policies, activities, products, or services of the co-sponsor. Any printed or electronically-generated material containing the publicizing the co-sponsored activity must include both a disclaimer that the co-sponsored activity does not constitute or imply an endorsement by SBA of the co-sponsor or donor, or any of their products or services. For co-sponsored activities involving for-profit co-sponsors, the co-sponsor must agree to clear all such material in advance (with the agency official) to ensure compliance with these restrictions. *See SBA, Outreach Activities, Standard Operating Procedure (SOP) § 90, no. 75, rev. 3 (April 27, 2007).*

2.4.2 Promotional items

This guide covers promotional items at 2.11.

2.5 Registration Fees

Generally, an agency may not augment its appropriation. An agency's collection, without statutory authority, of a registration fee for a conference improperly augments the agency's appropriation. For general information on augmentation, see 2.3.1 of this guide.

2.5.1 When the agency may collect and retain the fee

Agencies are generally restricted from collecting fees for co-sponsored conferences, as doing so would be a means of augmenting agency funds. Only if the agency has specific authority to do so may they collect fees. Under 31 U.S.C. § 3302, Federal entities are required to deposit any fees collected for conferences into the Treasury as miscellaneous receipts, unless the entity otherwise has authorization by law to retain such funds. *See Matter of: Securities and Exchange Commission-Reduction of Obligation of Appropriated Funds Due to a Sublease*, 1996 U.S. Comp. Gen. LEXIS 374, B-265727 (July 19, 1996) (finding that the SEC may not increase its appropriated funds by reducing its rent obligations to landlord). Furthermore, 31 U.S.C. § 3302(b) prohibits agencies from retaining "off-book" conference fees. *See Fox, Don W., Armed Forces Comptroller, "Doing the Right Thing—Fiscal Law Tips: Dealing with Conferences, Coins, and the Use of Government Resources"* (2006). However, a Federal entity may offset conference costs by allowing a contractor to collect and retain reasonable fees incidental to the conference. Any fees charged and collected that exceed the pre-conference cost estimate should be returned to the Federal entity and deposited into the Treasury as miscellaneous receipts.¹⁶ Likewise, an agency may seek to be reimbursed under the Economy Act, 31 U.S.C. § 1535, or the Government Employees Training Act, 5 U.S.C. § 4101 et seq.

¹⁶ Procedures for making deposits to the miscellaneous receipts account are usually set forth in agency regulations or manuals. For example, *see DoD Financial Management Regulation, Volume 12, Chapter 32 – Collection and Retention of Conference Fees from Non-Federal Sources and Conference Support/Collection and Retention of Registration Fees under Contract*, NIH Policy Manual 6031 (January 28, 2008).

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2.5.2 When the non-Federal entity may collect and retain the fee

A non-Federal co-sponsor may collect and retain conference fees to cover its share of expenses. Decisions about who will collect the fee or how the fee will be divided should be addressed in the co-sponsorship agreement, as necessary.

2.5.2.1 Free attendance by Federal agency employees

For purposes of this guide, the term “free attendance” refers to the waiver of the registration fee, cost of the materials, and cost of snacks and refreshments. The term does not include travel, lodging, entertainment, or meals.

The Federal agency and the non-Federal co-sponsor may agree to allow the Federal employees to attend the conference for free. This decision should be made in advance of the conference and documented in the agreement between the Federal agency and the non-Federal entity. *See Federal Communications Commission—Acceptance of Rent-Free Space and Services at Expositions and Trade Shows*, 63 Comp. Gen. 459, B-210620 (June 28, 1984).

If there is no agreement between the agency and the non-Federal entity co-sponsor about free attendance for Federal employees, employees may accept individual offers of free attendance if such acceptance is in accordance with the Standards of Conduct. For example, the conference may qualify as a widely attended gathering.

2.5.3 Specific agency guidance

10 U.S.C. § 2262 authorizes DoD to collect fees, to be used to offset associated allowable conference expenses, in advance, either directly or by using a contract (including a no-cost contract), from “any individual or commercial participant” attending DoD conferences. Under this statute, DoD may collect fees from agency employees, employees of other Federal agencies, and non-Federal persons, such as state and local government employees and private sector employees, attending a conference conducted by DoD. The implementing regulation is DoD Financial Management Regulation, Vol. 12, Ch. 32.

For purposes of 10 U.S.C. § 2262, the term “conference” also applies to “a seminar, exhibition, symposium, or similar meeting conducted by the Department of Defense.” The statute does not define these terms.

This statute may be used as authority for DoD to collect fees in connection with a co-sponsored conference. The statute does not exclude co-sponsored conferences from its application. The phrase “conference conducted by DoD” may refer to DoD-hosted conferences and DoD co-sponsored conferences. In both instances, the DoD component or organization “conducts” the conference in the sense that it contributes to the substantive development of the conference.

If DoD collects the fees directly, the amounts collected are credited to the appropriation or account from which the costs of the conference are paid and must be used to pay or reimburse those costs of the Department with respect to the conference. This authority may not be used to augment appropriations. In the case of fees collected under a contract for conference planning, organizing, or management, the fees should be structured so as not to exceed the cost of the conference. The costs of a conference include the actual costs incurred by the contractor, including

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its fee. Amounts that are collected in excess of costs are to be deposited in the Miscellaneous Receipts Account of the U.S. Treasury.

The components within DoD may have additional guidance on registration fees for co-sponsored conferences. For example, the Air Force addresses this issue in paragraph 4.55.1 of Air Force Instruction (AFI) 65-601, Vol. 1, *Budget Guidance and Procedures* (16 August 2012). According to this paragraph, the Air Force is permitted to have its co-sponsor handle the administrative arrangements, including the collection of the registration fee. OGE does not read the paragraph to mean that an entity that handles only administrative tasks is a co-sponsor. Reading this paragraph together with the DoD definition of “co-sponsorship” in subsection 3-206 indicates that a co-sponsor must also contribute to the development of the substantive aspects of the conference. If the co-sponsor is responsible for collecting the fees, the attendees of the co-sponsored conference (DoD personnel, non-DoD Federal personnel, and non-Government personnel) pay the registration fee to the non-Federal co-sponsor.

2.6 Travel Expenses for Non-Federal Attendees

Generally, an agency may not spend appropriated funds to pay for the travel and transportation expenses of non-Federal attendees at a conference unless there is specific statutory authority to use the funds for this purpose. This conclusion is based on 31 U.S.C. § 1345 and the interpretation of that statute by the Office of Legal Counsel (OLC) at the Department of Justice and the Comptroller General.

31 U.S.C. § 1345 provides:

“Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit—

(1) an agency from paying the expenses of an officer or employee of the United States Government carrying out an official duty; and

(2) the Secretary of Agriculture from paying necessary expenses for a meeting called by the Secretary for 4-H Boys and Girls Clubs as part of the cooperative extension work of the Department of Agriculture.”

This prohibition applies to a “meeting.” If a “conference” has the characteristics of a “meeting” under the statute, the prohibition applies to the expenditure of appropriated funds for travel expenses for non-Federal personnel. Non-Federal personnel do not fall within either of the exceptions listed in the statute. Unless there is another statute that provides for the use of appropriated funds for travel and transportation for non-Federal attendees of a conference, those funds may not be used for that purpose.

OLC discussed the meaning of the word “meeting” as used in the statute in a 2004 opinion for the Department of Commerce. See Memorandum Opinion for the Department of Commerce, *Use of Appropriations to Pay Travel Expenses for an International Trade Administration Fellowship Program* (October 7, 2004). The Department of Commerce had asked OLC if a proposed International Trade Administration fellowship program constituted a “meeting” within the meaning of the statute. Representatives from several African countries were scheduled to attend the two-week program. The purpose of the program was to provide information to African businesspersons and African government employees about the U.S. financial services market and U.S. Government programs and to provide American businesses with information about potential opportunities in Africa.

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OLC first determined that the management training fellowship program qualified as a meeting under the statute. Citing *Webster's Third New International Dictionary* (2002), OLC noted that the training program fit the common meaning of the word "meeting." One definition of "meeting" is "a gathering for business, social, or other purposes." The attendees were scheduled to meet with Government trade agencies, various private sector organizations, and some U.S. companies. OLC concluded that this type of interaction satisfied the meaning of the word.

OLC also relied upon the legislative history of 31 U.S.C. § 1345 to support its conclusion. OLC noted that the word "meeting" was inserted into the statute in 1982, when Congress recodified title 31. The original language was "any conventions or other forms of assemblage or gathering." In the legislative history, Congress stated that it did not intend to make a substantive change in the law by changing this language.

OLC cited several opinions of the Comptroller General that supported its interpretation of the statute. See *Mine Safety and Health Administration—Payment of Travel Expenses at Seminars*, Comp. Gen. B-193644 (July 2, 1979) (31 U.S.C. § 1345 prohibited the agency from paying the travel expenses of miners and mine operators to attend agency safety training) and *National Highway Traffic Safety Administration—Travel and Lodging Expenses*, 62 Comp. Gen. 531 (July 8, 1983) (31 U.S.C. § 1345 prohibited the agency from paying the travel expenses of state officials to attend an agency workshop).

In addition, some agencies may have additional authority to provide speakers fees or travel for non-Federal attendees under invitational travel orders, 5 U.S.C. § 5703. For a more detailed discussion of this topic, consult GAO's *Principles of Federal Appropriations Law* (Red Book), vol. 1, ch. 4, 37-51 (3d ed. 2004). See also, e.g., *DOD Section 6 School Board Members—Invitational Travel Orders*, B-260896 (October 17, 1996); *Use of Invitational Travel Orders for Military Dependents to Attend Anti-Terrorism Briefings*, 71 Comp. Gen. 6, B-238352 (October 4, 1991); *Security Training for Spouses of FAA Employees*, 71 Comp. Gen. 9, B-243180 (October 4, 1991).

2.7 Providing Meals, Snacks, and Refreshments

2.7.1 Federal employees at their official duty station

The Comptroller General of the United States has consistently held that, absent specific statutory authority, the Government may not pay subsistence expenses or furnish free meals to civilian employees at their official duty stations. See *Matter of Randall R. Pope and James L. Ryan—Meals at Headquarters Incident to Meetings*, 64 Comp. Gen. 406, 407, B-215702 (March 22, 1985). In the context of this restriction, the term "food" is taken to include meals, snacks, and refreshments. This rule is predicated upon the view that "[f]eeding oneself is a personal expense which a government employee is expected to bear from his or her salary." *Matter of Pension Benefit Guaranty Corp.—Provision of Food to Employees*, 1996 U.S. Comp. Gen. LEXIS 402, B-270199, at 2 (August 6, 1996).

There are certain limited statutory exceptions to this general prohibition of which the following are relevant to conferences. In the first instance, appropriated funds may be used to pay for meals for those Federal employees who are on travel orders. 5 U.S.C. § 5702(a) (2006) ("Under regulations prescribed . . . an employee when traveling on official business . . . is entitled to" travel expenses and per diem allowance). Per diem rates incorporate a definition of "subsistence" as "lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler." 5 U.S.C. § 5701(3), cited in Memorandum Opinion for the General

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Counsel, Environmental Protection Agency, *Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences* (April 5, 2007). Employees on official travel status must deduct the cost of meals provided at the conference from their per diem when they file their travel voucher. The costs of refreshments provided at the conference do not have to be deducted.

A second exception is the training exception derived from the GETA, 5 U.S.C. § 4109. Pursuant to that provision, agency heads are authorized to pay the cost of “services or facilities directly related to the training of the employee.” 5 U.S.C. § 4109(a)(2)(F). The Comptroller General has held that this language constitutes specific statutory authority for Federal agencies to provide food “at government expense to employees attending an authorized training program when provision of that food is necessary to achieve the objective of the training program.” *U.S. Army Garrison Ansbach—Use of Appropriated Funds to Purchase Food for Participants in Antiterrorism Exercises*, B-317423, at 3 (March 9, 2009); *Matter of Pension Benefit Guaranty Corp*, B-270199, at 2.

Meals may be provided at conferences that meet the requirements of 5 U.S.C. § 4109. In order for a meal at a training program or conference to be eligible for reimbursement under this exception, the Comptroller General has declared that: (1) the employee’s attendance at the meal must be necessary in order for him or her to obtain the full benefit of the training program; and (2) the employee cannot have been free to partake of his or her meals elsewhere without being absent from essential formal discussions, lectures, or speeches concerning the purpose of the training. *Matter of Coast Guard—Meals at Training Conference*, 1992 U.S. Comp. Gen. LEXIS 740, B-244473, at 2 (January 13, 1992).

Another statutory exception that may be applicable to conferences is the meetings exception which flows from the language of 5 U.S.C. § 4110. In accordance with that statute, “[a]ppropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.” Where a conference meets the requirements of the meeting exception, meals and refreshments may be reimbursed.

In applying this exception, the Comptroller General has developed a two-prong test that must be stringently applied to questions of whether appropriated funds may be expended on meals or refreshments provided at meetings. The first prong of the test focuses upon the relationship between the subject matter of the meeting and the agency’s mission. According to GAO opinions, meals may be reimbursed only for meetings that are related to the purpose for which an agency was established, or the purpose for which an agency’s appropriation was made. *Matter of Gentry Brown, Leroy Vokins and Dianna Whitaker—Reimbursement for Registration Fee and Luncheon*, 1980 U.S. Comp. Gen. LEXIS 3677, B-195045, at 3 (February 8, 1980); *Matter of Sandra L. Ferguson, Jeff M. Sirmon, and Kenneth J. Johnson—Reimbursement for Registration Fee and Luncheon—Combined Federal Campaign*, 1983 U.S. Comp. Gen. LEXIS 4, B-210479, at 2 (December 30, 1983). Meetings or conferences called for the purpose of addressing matters of internal agency management and government or routing intra-agency business are not sufficient to trigger the exception. *Matter of Corps of Engineers—Use of Appropriated Funds to Pay for Meals*, 72 Comp. Gen. 178, 180, B-249795, (May 12, 1993). Moreover, meetings that are of general interest to all Federal agencies will not qualify. *Id.* The meeting must instead be linked in some definite manner to an agency’s mission. *Id.*

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The second prong of the test is comprised of three subparts that closely mirror the requirements set forth in the training exception. In order for a meal at a meeting to be eligible for reimbursement under this prong, the Comptroller General has declared that: (1) the meal must be incidental to the meeting; (2) the employee's attendance at the meal must be necessary for full participation in the business of the meeting; and (3) the employee cannot have been free to partake of his or her meals elsewhere without being absent from essential formal discussions, lectures, or speeches concerning the purpose of the meeting. *Matter of Gerald Goldberg, et al—Meals at Headquarters Incident to Attendance at Meeting*, 1980 U.S. Comp. Gen. LEXIS 3212, B-198471, at 3 (May 1, 1980).

The first element requires a close examination of the relationship between the meal and the meeting. Under this approach, "a meal must be part of a formal meeting or conference that includes not only functions such as speeches or business carried out during a seating at a meal but also includes substantial functions that take place separate from the meal." *Matter of Randall R. Pope and James L. Ryan—Meals at Headquarters Incident to Meetings*, 64 Comp. Gen. 406, 407, B-215702 (March 22, 1985). Simply put, the meal must be incidental to the meeting rather than the meeting being incidental to the meal. *Id.* In performing this analysis, the Comptroller General has focused primarily upon the length of the meeting. Meetings that last only as long as, or marginally longer than, meals have been rejected under this criterion. *Matter of J.D. MacWilliams*, 65 Comp. Gen. 508, 510, B-200650 (April 26, 1986). The longer a meeting lasts, the more likely it is that a meal served during the meeting will be adjudged incidental. The case law suggests that in order to satisfy this requirement, a meeting must be a multi-day, or at the very least, an all-day affair.

The second and third elements of the test are closely related and focus on the timing of the meal or snack periods and the nature of the activity taking place during these periods. Meal or snack periods that take place prior to or after the conclusion of the day's meeting session are inherently suspect. Substantial meeting functions must take place during the meal or snack periods. Networking and icebreaker sessions are not sufficient. In a case on this point, the Comptroller General has held that the provision of food "during a preliminary social gathering of seminar attendees or at coffee breaks" could not be paid for with appropriated funds. *Matter of Pension Benefit Guaranty Corp*, 1996 U.S. Comp. Gen. LEXIS 402, B-270199, at 2-3 (August 6, 1996). The Comptroller General based this determination on the fact that "had no food been provided, i.e., had the employees obtained breakfast or beverages with their own resources, the [conference] would have occurred as planned and the objectives of the [conference] would have been achieved nonetheless." *Id.* In the view of the Comptroller General, the social interaction sought to be achieved by such preliminary gatherings, although possibly desirable, is not an essential or integral part of the meeting itself. *Id.*

2.7.2 Federal employees away from their official duty station

If an employee is away from his official duty station to receive training or other benefits as part of his Federal employment, the agency may pay for or reimburse that employee for "necessary expenses of the training." *See* 5 U.S.C. § 4109. Acceptable expenses under this statute include, among other things, the necessary costs of travel and per diem.

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2.7.3 Non-Federal attendees

The prohibition in 31 U.S.C. § 1345¹⁷ applies to “subsistence expenses.” Are the costs of light refreshments “subsistence expenses”? In 2007 OLC issued an opinion, in response to a question from the Environmental Protection Agency (EPA) about whether appropriated funds may be used to pay for light refreshments at a conference.¹⁸ See Memorandum Opinion for the General Counsel, Environmental Protection Agency, *Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences*, 2007 O.L.C. LEXIS 6, 31 Op. O.L.C. 1 (April 5, 2007). OLC first addressed the issue of the meaning of the term “meeting.” OLC stated that its broad interpretation of “meeting” from its 2004 opinion for the Department of Commerce was controlling for the executive branch. The 2004 opinion is discussed in paragraph 2.6 of this guide. OLC concluded that the definition includes a conference.

OLC next addressed the issue of whether “light refreshments” were “subsistence.” Citing Webster’s Third New International Dictionary (1993) and Webster’s Ninth New Collegiate Dictionary (1984), OLC concluded that “‘food’ of some sort” was included within the simple dictionary definition of the term “subsistence” and that the definitions did not distinguish between food that was a meal and food that constituted light refreshments. Page 3 of Memorandum. Additionally, OLC noted that when the term “subsistence” was used in other places in the U.S. Code, it included light refreshments. See, e.g., 31 U.S.C. § 326(b) and 31 U.S.C. § 3903(c). Consequently, unless an agency can identify a statute that allows the expenditure of appropriated funds for light refreshments in a particular circumstance, the funds may not be used for this purpose.

The EPA asked OLC for its opinion about whether the following eight statutes qualify as “[e]xceptions specifically provided by law”:

- Section 103 of 42 U.S.C. § 7403, the Clean Air Act
- Section 104 of 33 U.S.C. § 1254, the Clean Water Act
- 42 U.S.C. § 9604(k)(6), the Comprehensive Environmental Response, Compensation, and Liability Act
- 42 U.S.C. § 9660
- 42 U.S.C. § 6981, the Solid Waste Disposal Act
- 42 U.S.C. § 4332(2)(G), the National Environmental Policy Act
- 42 U.S.C. § 4742, the Intergovernmental Cooperation Act
- 5 U.S.C. § 4110, the Government Employees Training Act

The first four statutes generally authorize the EPA to fund the training of non-Federal personnel. The last four statutes allow the EPA to encourage or fund research. The question presented by the EPA was whether the general authority to fund training and research to be shared with non-Federal personnel was the specific authorization described in the exception in 31 U.S.C. § 1345. OLC noted that none of the statutes cited by the EPA had provisions regarding travel, transportation, and subsistence. OLC determined that general authority to fund a meeting is not sufficient to permit the use of appropriated funds for “travel, transportation and subsistence” and that none of these statutes were specific authority for using appropriated funds to pay for light refreshments for non-Federal personnel at conferences. This position is consistent with several

¹⁷ See paragraph 2.6 of the guide for the text of the statute.

¹⁸ Although the question was asked in the context of an EPA-hosted conference, the rationale behind the OLC’s decision can be applied to the expenditure of appropriated funds for a co-sponsored conference.

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decisions from the Comptroller General. See *National Highway Traffic Safety Administration—Travel and Lodging Expenses*, 62 Comp. Gen. 531, B-210967 (July 8, 1983); *Mine Safety and Health Administration—Payment of Travel Expenses at Seminars*, 1979 U.S. Comp. Gen. LEXIS 2654, B-193644 (July 2, 1979) and *Matter of: Use of Appropriated Funds in Connection with National Solid Waste Management Association Convention*, 1975 U.S. Comp. Gen. LEXIS 1937, B-166506 (July 15, 1975).

What statutes contain specific authority to use appropriated funds for this purpose? In separate opinions, the Comptroller General has found required specificity in two statutes, 100 Pub. L. 485, § 126, 102 Stat. 2354 (1988) and 83 Pub. L. 530, § 1, 68 Stat 532 (1954). The common factor in both statutes is that they required that the agency host a conference; they did not merely authorize the agency to host a conference. See *Matter of: Commission on Interstate Child Support—Payment of Lodging and Meal Expenses of Certain Attendees at the National Conference on Interstate Child Support*, B-242880 (March 27, 1991), and *Appropriations—Availability—Travel Expenses of Delegates to White House Conference on Education*, 35 Comp. Gen. 129, B-124969 (August 31, 1955). When an agency is required by law to hold a conference, appropriations may be used to pay for the travel, lodging, and subsistence expenses of non-Federal invitees deemed to be essential to the conference, regardless of whether specific statutory authority exists directly referencing the use of appropriations for those purposes. *Id.* Further discussion of this issue and citations to other cases can be found in GAO's *Principles of Federal Appropriations Law* (Red Book), vol. 1, ch. 4, 45-47 (3d ed. 2004).

2.8 Entertainment

Federal agencies cannot generally pay for employees to attend purely entertainment functions at conferences. For government employees within their official duty stations, appropriated funds may not be used to pay for "entertainment" expenses, including buffets, refreshments and coffee, unless specifically authorized by statute. See B-230382 (December 22, 1989); B-208729 (May 24, 1983) 61 Comp. Gen. 260, 263 (1982). However, the Comptroller General has recognized two limited exceptions to the bar on government-funded entertainment expenses. The first is where a conference fee includes "social events" as a non-severable element of the conference registration fee and the social event is an incidental part of the conference. The second involves conference meals and refreshments—entertainment in some sense—where (1) the meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, at 13. See *Department of The Army—Claim of the Hyatt Regency Hotel*, B-230382 (December 22, 1989).

2.9 Reserved

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2.10 Honoraria

Honoraria refers to any payment of money or anything of value for an appearance, speech, or article. 5 C.F.R. § 2634.105(i). The receipt of honoraria must comply with the Standards of Conduct governing compensation from outside sources. *See, e.g.*, 5 C.F.R. § 2635.801(b).

2.10.1 Received by agency employees

In general, employees may not receive outside payment for speaking or appearing at a conference, or writing an article for a conference. 5 C.F.R. § 2635.807 forbids employees from receiving compensation from any source other than the Government for teaching, speaking, or writing that *relates to* the employee's official duties. If an employee is speaking at a conference she is attending incident to her Federal employment, the speech most likely relates to official duties. Employees may, however, accept gifts valued under \$20, and whose aggregated value does not exceed \$50 from the same source in a calendar year. *See* 5 C.F.R. § 2635.204(a). Employees may also receive bona fide awards valued at \$200 or less, as long as the award is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance of the employee's duties. Additional requirements for receiving awards can be found at 5 C.F.R. § 2635.204(d).

2.10.2 Specific Agency Guidance

Agencies may prescribe specific rules for the receipt and issuance of honoraria. The EPA, for example, permits employees to receive modest, nonmonetary awards such as mugs or plaques to recognize an achievement. EPA Guide, ch. 2, (C)(2)(b). In addition, the EPA allows agencies to pay contractual fees for speakers, whether or not such fees are called honoraria. EPA Guide, ch. 2, (C)(2)(a). The Air Force sets approval thresholds for fees to be paid to speakers in AFI 65-601, Vol 1, *Budget Guidance and Procedure*, (16 August 2012).

2.11 Promotional Items

2.11.1 Gifts in General

The acceptance of gifts by executive branch employees from outside sources is regulated by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. The definition of "gift" under the Standards is broad, and includes any "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value." 5 C.F.R. § 2635.203(b). The acceptance of a gift is impermissible if it is given by a prohibited source or given because of an employee's official position. *See* 5 C.F.R. § 2635.202(a). A source may be considered prohibited for a number of reasons, including but not limited to: if they are seeking official action by the employee's agency or have business before, or are seeking to engage in business with, the employee's agency. 5 C.F.R. § 2635.203(d)(1) and (2). Similarly an organization can be considered a prohibited source if most of its members would be individually considered prohibited sources. 5 C.F.R. § 2635.203(d)(5); Office of Government Ethics (OGE) Informal Advisory Letter 94 x 5.

While the definition of gift is broad, nine categories of items are excluded from that definition:

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- a. Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
- b. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
- c. Loans from banks and other financial institutions on terms generally available to the public
- d. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations
- e. Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties
- f. Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer
- g. Anything which is paid for by the Government or secured by the Government under Government contract
- h. Any gift accepted by the Government under specific statutory authority
- i. Anything for which market value is paid by the employee

5 C.F.R. § 2635.203

If an item is considered a gift, an employee is generally not allowed to accept the item if it is given to the employee by a prohibited source, or on the basis of the employee's official position. 5 C.F.R. § 2635.202(a). However, the Standards of Conduct sets out twelve exceptions that allow the acceptance of certain items:

- a. Gifts of twenty dollars or less
- b. Gifts based on a personal relationship
- c. Discounts and similar benefits
- d. Awards and honorary degrees
- e. Gifts based on outside business or employment relationships.
- f. Gifts in connection with political activities permitted by the Hatch Act Reform Amendments
- g. Free attendance at widely attended gatherings and other events
- h. Social invitations from persons other than prohibited sources
- i. Meals, refreshments and entertainment in foreign areas
- j. Gifts to the President or Vice President
- k. Gifts authorized by supplemental agency regulation
- l. Gifts accepted under specific statutory authority

5 C.F.R. § 2635.204.

2.11.2 Provided to Federal attendees by the non-Federal entity co-sponsor

May an executive branch employee accept promotional items given away by the non-Federal entity co-sponsor? It depends. The Standards of Ethical Conduct for Employees of the Executive Branch has a broad definition of "gift"—any item that has a monetary value. 5 C.F.R. § 2635.203(b). Unless the promotional item fits within one of the nine exclusions from the definition, it will probably be considered a gift. *See* 5 C.F.R. § 2635.203(b)(1) through (9). If the

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non-Federal entity co-sponsor is a prohibited source or the item was given because of the employee's official position, the employee may not accept the item unless one of the gift exceptions applies. One of the exceptions that may be helpful in the case of promotional items is the exception allowing executive branch employees to accept items having a value of \$20 or less. 5 C.F.R. § 2635.204(a). If the fair market value of the item is \$20 or less, the employee may accept the gift. Employees relying on this exception must keep in mind the limitations on the use of this exception. For example, if the non-Federal entity co-sponsor is giving away more than one promotional item, the employee must aggregate the value of the items. An employee may not accept gifts having an aggregate market value of \$20 or less per source per occasion. In addition, an employee may not accept more than \$50 worth of items from a single source in a calendar year.

2.11.3 Provided to Federal attendees by exhibitors

There may be many different players associated with a co-sponsored conference—the Federal agency co-sponsor, the non-Federal entity co-sponsor, and maybe companies that set up booths at the conference to provide information about their products and services. The authors of the guide are referring to these companies as exhibitors. May an executive branch employee accept promotional items given away to attendees of the conference by exhibitors at the conference? It depends. The analysis for promotional items from exhibitors at a conference is the same as the analysis for gifts from the non-Federal entity co-sponsor. Unless the promotional item fits within one of the nine exclusions from the definition of a “gift,” it will probably be considered a gift. If the exhibitor is a prohibited source or the item was given because of the employee's official position, the employee may not accept the item unless one of the gift exceptions applies. If the fair market value of the item is \$20 or less, the employee may accept the gift under the exception at 5 C.F.R. § 2635.204(a). Employees relying on this exception must keep in mind the limitations on the use of this exception. For example, if an exhibitor is giving away more than one promotional item, the employee must aggregate the value of the items. An employee may not accept gifts having an aggregate market value of \$20 or less per source per occasion. In addition, an employee may not accept more than \$50 worth of items from a single source in a calendar year.

2.11.4 Provided to Federal attendees and non-Federal attendees by the agency

2.11.4.1 Using appropriated funds

Generally, a federal agency may not use appropriated funds to purchase promotional items to distribute at a conference. 31 U.S.C. § 1301(a) provides that appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law. An expenditure that is not expressly authorized is proper only if it constitutes a “necessary expense” of the agency. *In the Matter of Novelty Garbage Cans Distributed by Environmental Protection Agency*, 57 Comp. Gen. 385, B-191155 (March 29, 1978); *In the Matter of Use of U.S. Army Criminal Investigative Command Appropriated Funds for Purchase of Marble Paperweights and Walnut Plaques*, 55 Comp. Gen. 346, B-184306 (October 2, 1975).

The following are examples of promotional items that were not authorized because they were not found to be a “necessary expense”:

- a. Ashtrays bearing a seal given to federal officials¹⁹

¹⁹ 53 Comp. Gen. 770, B-175434 (1974).

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- b. Novelty items (pens, scissors, shoelaces) used to support recruitment efforts²⁰
- c. Baseball caps for recruitment efforts²¹
- d. Caps for volunteers²²
- e. Novelty garbage cans containing candy in the shape of solid waste²³
- f. Ice scrapers imprinted with safety slogans²⁴
- g. Buttons demonstrating GSA's commitment to an alternative energy program²⁵
- h. Key chains bearing a symbol intended to generate future responses from seminar participants²⁶

The following are examples of promotional items that were authorized because they were found to be a "necessary expense":

- a. Buttons and magnets from the EPA that contain messages related to improving air quality (the messages furthered "EPA's statutory function of increasing public awareness of indoor air quality")²⁷
- b. Matchbooks and jar grip openers for recruitment efforts and for informing veterans of available services²⁸
- c. Wall calendars prepared by the U.S. Army²⁹
- d. Lava rocks as gifts for visitors to a park to discourage unauthorized removal of similar rocks from the park³⁰
- e. Balloons that were to be released from a parade float to publicize a Department of Labor employment program³¹
- f. Framed posters prepared by the U.S. Army³²

In a 2009 decision, GAO addressed the issue of whether an agency may use appropriations to distribute items generally considered personal gifts and that could not, as a general rule, be distributed without statutory authority. The opinion allowed an exception to this general rule where the Fish and Wildlife Service asked in advance whether it could use appropriations to distribute items without the agency logo such as T-shirts, baseball caps, stocking caps, and coffee mugs. GAO found this would be a proper expenditure of appropriations as it was part of a strategic education plan designed after traditional methods of public outreach and education failed to halt the decline of a threatened waterfowl species. *U.S. Fish and Wildlife Service—Steller's and Spectacled Eiders Conservation Plan*, 2009 U.S. Comp. Gen. LEXIS 153, B-318386 (August 12, 2009).

²⁰1996 U.S. Comp. Gen. LEXIS 414, B-247563.3 (1996).

²¹1995 U.S. Comp. Gen. LEXIS 810, B-260260 (1995).

²²1981 U.S. Comp. Gen. LEXIS 1740, B-201488 (1981).

²³57 Comp. Gen. 385, B-191155 (1978).

²⁴1988 U.S. Comp. Gen. LEXIS 1582, B-223608 (1988).

²⁵1978 U.S. Comp. Gen. LEXIS 2060, B-192423 (1978).

²⁶54 Comp. Gen. 976, B-182629 (1975).

²⁷72 Comp. Gen. 73, B-247686 (1992).

²⁸1993 U.S. Comp. Gen. LEXIS 454, B-247563.2 (1993).

²⁹62 Comp. Gen. 566, B-211477 (1983).

³⁰1979 U.S. Comp. Gen. LEXIS 3003, B-193769 (1979).

³¹B-62501 (1947).

³²1988 U.S. Comp. Gen. LEXIS 1580, B-230062 (1988); 1989 U.S. Comp. Gen. LEXIS 468, B-234241 (1989).

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2.11.4.2 Solicitation

Agency staff may not engage in fundraising, or solicitations for donations of any kind, to support an event, except as may be authorized by law. Agency staff may not solicit any gifts for the agency, for any purpose whatsoever, absent statutory authority. Furthermore, although an agency may have authority, under limited circumstances, to assist in certain fundraising efforts of non-Federal entities (5 C.F.R. § 2635.808(b)), an agency should not assist in any fundraising efforts designed to meet a co-sponsor's share of the costs of an event. Such efforts too easily may be perceived as—and may in fact become—attempts to raise funds to benefit the agency itself.³³

An agency may be able to solicit entities for items to distribute at the conference. In January 2001, OLC issued an opinion to the Director of the U.S. Office of Government Ethics about the authority of a Federal agency to solicit gifts. Randolph D. Moss, Office of Legal Counsel, Memorandum Opinion for the Director, Office of Government Ethics, *Authority to Solicit Gifts*, 2001 O.L.C. LEXIS 5 (January 19, 2001). OLC determined that an agency's "express statutory authority to accept gifts included the implicit authority to solicit gifts." Among the agencies that have statutory authority to accept gifts and therefore the authority to solicit gifts are the Departments of Justice, Treasury, State, and Commerce and the U.S. Office of Government Ethics. An agency that does not have gift acceptance authority, however, does not have the authority to solicit gifts.

However, although the Department of Defense has gift acceptance authority under 10 U.S.C. §§ 2601-2608, DoD prohibits official solicitation of gifts. *See* DoD Financial Management, DoD 7000.14-R, Vol. 12, ch. 30, paragraph 300502. *See also* DoD 7000.14-R, Vol. 12, Ch. 3, paragraph 030303. DoD attorneys should not rely on the OLC opinion to allow agency solicitation of gifts.

Often, a non-Federal co-sponsor will want to raise funds from various donors in order to help meet its allotted share of the costs of an event. As a practical matter, an agency cannot become involved in scrutinizing the fundraising activities of its co-sponsors. However, a non-Federal co-sponsor must give the following assurances: (a) that any solicitation will make clear that the non-Federal co-sponsor, not the agency, is asking for the funds; (b) that the non-Federal co-sponsor will not imply that the agency endorses any fundraising activities in connection with the event; and (c) the non-Federal co-sponsor will make clear to donors that any gift will go solely toward the expenses of the non-Federal co-sponsor, not the agency.³⁴

2.11.5 Valuation of Gifts and Promotional Items

In determining the value of a gift from a non-federal entity, a federal employee should ascertain the gifts "market value." 5 C.F.R. § 2635.203(c). Market value is typically the retail cost of the gift, but if the value of the gift is unascertainable, market value is an amount which is equivalent to the retail cost the employee would incur for a similar gift. 5 C.F.R. § 2635.203(c); OGE Informal Advisory Letter 93 x 29.

³³ HHS *Co-Sponsorship Guidance*.

³⁴ HHS *Co-Sponsorship Guidance*.

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In OGE Informal Advisory Memorandum 07 x 2,³⁵ OGE contemplated how to value private skybox tickets which included food and parking, for which no equivalent retail cost existed. OGE determined that the cost should encompass the price of the most expensive seats plus the cost of parking and food. OGE also advised that while the “face value” of a product can typically be relied upon as an indication of the market value of an item, an employee should not accept that value as correct in the case of non-public goods and services. *See also* OGE Informal Advisory Memorandum 93 x 19.

OGE has also made it clear that a discount on an item or service may, but does not necessarily, constitute a gift. OGE Informal Advisory Memorandum 85 x 13; OGE Informal Advisory Letter 96 x 20. As illustrated by the facts in these opinions, what may appear to be a fair contractual exchange may in fact be a “disguised gift given with an improper or questionable motive.” OGE 96 x 20. Thus an employee must be vigilant in determining whether a discounted item or service constitutes a gift, or whether the discount is part of an arms-length transaction that legitimately represents the fair value of the item or service. *Id.*

2.12 Reserved

2.13 Specific Agency Guidance

2.13.1 General Services Administration

The General Services Administration (GSA) has issued an instructional letter for its employees on the topic of conferences. A link to the letter is in the resources section of this guide. Ethics counselors for GSA should refer to this letter when answering questions about conferences.

2.13.2 Department of Health and Human Services

The Department of Health and Human Services (HHS) has issued a memorandum for its employees on the topic of co-sponsorship. A link to the memorandum is in the resources section of this guide. Ethics counselors for HHS should refer to this guide when answering questions about co-sponsored conferences.

2.13.3 Environmental Protection Agency

The Environmental Protection Agency has issued a guide for its employees on conducting conferences. A link to the EPA guide is in the resources section of this guide. Ethics counselors for the EPA should refer to this guide when answering questions about conferences.

³⁵ *Memorandum dated February 9, 2007, from Robert I. Cusick, Director, to Designated Agency Ethics Officials Regarding Valuation of Gifts of Admission to an Event in a Skybox or Private Suite.*

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Chapter 3: Non-Federal Entity Conferences

3.0 Introduction

A Federal agency may provide support to a conference that is hosted by a non-Federal entity, but there are limits on the type of support that it may provide.

Once it is determined what level of support a Federal agency may provide to a conference hosted by a non-Federal entity, other issues must be considered, including whether employees may accept offers of free attendance and travel expenses.

3.1 Federal Agency Speakers

3.1.1 Official Participation

If the Federal employee is speaking in his or her official capacity, he or she is prohibited by 18 U.S.C. § 209 from receiving compensation for speaking. He or she may accept “meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the . . . speaking takes place” and items of little monetary value such as a commemorative plaque. These meals and other incidents of attendance are not considered gifts to the employee. 5 C.F.R. § 2635.807(a)(2)(iii)(A) and (B). *See* OGE Informal Advisory Letter 98 x 14, 1998 O.G.E. LEXIS 104 (August 31, 1998).

3.1.1.1 When the Federal employee holds a position with the non-Federal entity

When an employee serves as an officer, director, or employee of a non-Federal entity, 18 U.S.C. § 208 may preclude him or her from serving as an official agency speaker at a conference hosted by that non-Federal entity. 18 U.S.C. § 208 prohibits an employee from “participating personally and substantially in an official capacity in any particular matter affecting the financial interests of an organization in which the employee serves as an officer, director, or employee, unless he obtains a waiver under 18 U.S.C. § 208(b).” OGE 98 x 14.

3.1.1.2 When the Federal employee is an active participant in the non-Federal entity

If the Federal employee does not hold a position with the non-Federal entity but is an active participant in the entity, there may be an appearance problem. Under 5 C.F.R. § 2635.502, “an employee should not participate in certain assignments involving an organization in which he is an active participant, if a reasonable person with knowledge of the relevant facts would question his impartiality.” OGE 98 x 14.

3.1.2 Unofficial participation

If the Federal employee is speaking in his or her unofficial capacity, he or she must comply with any prior approval requirement that the agency has for outside activities. For example, the Commodity Futures Trading Commission requires its employees to obtain approval for any outside speaking activity, both compensated and uncompensated. 5 C.F.R. § 5101.103(c)(1). Its employees are not required to obtain permission if the activity is to be undertaken for a nonprofit

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charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization and is to be done without compensation. 5 C.F.R. § 5101.103(c)(5).

The Federal employee cannot receive compensation if the speaking activity is related to his official duties even though it is undertaken in his personal capacity. 5 C.F.R. § 2635.807. Generally, “speaking is considered related to duties if the subject of the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period, or any ongoing or announced policy, program or operation of the employee’s agency.” OGE 98 x 14; 5 C.F.R. § 2635.807(a)(2)(i)(E)(1) & (2).

3.1.3 Reserved

3.1.4 Reserved

3.2 Free Attendance for Federal Employees

3.2.1 Acceptance by Agency

Generally, an agency may not augment its appropriations. However, some agencies have a gift acceptance statute or other statutory authority which would allow the agency to accept free attendance on behalf of its employees without an unlawful augmentation of appropriations.

3.2.2 Acceptance by Employee

Federal employees may not accept free attendance to a conference. In many cases such offers constitute a gift for the purposes of the Standards of Ethical Conduct for Employees of the Executive Branch, and absent an applicable exception, will be prohibited if given by a prohibited source or on the basis of the employee’s official position. 5 C.F.R. § 2635.202(a).

3.2.3 Specific Agency Guidance

DoD has additional regulatory authority allowing a DoD employee to accept free attendance at certain types of conferences. The Joint Ethics Regulation, DoD 5500.07-R, subsection 2-202 allows a DoD employee and the spouse of the DoD employee to accept free attendance at a conference hosted by a state or local government or a tax-exempt civic organization when the following three conditions are met:

- a) the Agency Designee has determined that the community relations interests of the Agency will be served by the DoD employee’s attendance;
- b) the cost of the DoD employee’s and the spouse’s attendance is provided by the sponsor in accordance with 5 C.F.R. § 2635.204(g)(5); and
- c) the gift of free attendance meets the definition in 5 C.F.R. § 2635.204(g)(4).

3.3 Reserved

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3.4 Free Attendance at Social Events Connected to the Conference

Federal employees may accept free admission to social events connected to a conference in some instances. As a general matter, federal employees may not accept gifts from private entities given to them because of their official position. 5 C.F.R. § 2635.202(a). The exception in 5 C.F.R. § 2635.204(g)(2) for widely attended gatherings (WAG) may apply to a social event connected to a conference. See 5 C.F.R. § 2635.204(g)(4).

The WAG exception to the gift prohibition may be applied only to entertainment that is an “integral part of the event.” 5 C.F.R. § 2635.204(g)(4). The exception does not cover events merely “collateral” to the main event being shared with the other attendees. 5 C.F.R. § 2635.204(g)(4). For a more detailed discussion of the WAG exemption and its application to particular types of social events, see OGE Informal Advisory Memorandum 07 x 14.

The widely attended gathering exception requires an agency designee to determine that the employee’s attendance is in the interest of the agency. 5 C.F.R. § 2635.204(g)(3). If either the event’s donor or a majority of a corporate donor’s board has interests that will be substantially affected by performance of the employee’s official duties, the designee must make a written finding that the interests of the agency in attendance outweigh any concern that the attendance will improperly influence the employee in her official duties. *Id.*

3.5 Items Provided to Agency by Non-Federal Entity

If an agency does not have statutory gift acceptance authority, the agency is prohibited from accepting any gifts. However, if something is determined not to be a gift, the agency is allowed to accept receipt of that item or service.

GAO’s definition of a gift includes “essentially . . . gratuitous conveyances or transfers of ownership in property without any consideration.” Comptroller General Warren to the Secretary of the Interior, B-56153, 25 Comp. Gen. 637 (1946). This definition of gift tracks the traditional legal definition of gift. Black’s Law Dictionary (7th ed. 1999) (“The act of voluntarily transferring property to another without compensation,” or a “thing so transferred.”) For the most part, the GAO determination of what constitutes a gift is dependent on whether the agency is giving the non-agency actor anything of value in consideration for the gift. B-56153. In *Federal Communications Commission—Acceptance of Rent-Free Space and Services Expenses at Trade Shows*, 63 Comp. Gen. 459, B-210620 (June 28, 1984), GAO stated that acceptance of free space and services did not qualify as a gift because there was an exchange of consideration between the promoters and the agency. GAO explained that the promoters received a benefit of increased admissions via increased interest resulting from the agency’s presence, and the agency received the benefit of using the exhibition space for free.

The lynchpin of GAO’s “gift” definition therefore rested on whether or not the promoter received consideration, which would make the “free” space part of a contractual exchange, instead of a gratuitous conveyance. See, e.g., *Kaplan v. First Options (In re Kaplan)*, 143 F.3d 807, 812 n. 8 (1997). Consideration can constitute the exchange of items of value, promises, forbearances, or destructions of legal rights. Black’s Law Dictionary (7th ed. 1999); Restatement (Second) of Contracts § 71 (1981).

Likewise, GAO’s definition itself may be significantly narrower than that which is used by a particular agency. For example, the U.S. Department of Agriculture defines gift as “property, whether

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personal or real, voluntarily transferred to the government without compensation or consideration, or for substantially less than market value, for the benefit of the Department or for the carrying out of any of its functions. For purposes of this Departmental Regulation (DR), the term ‘gift’ includes a bequest or devise, unless otherwise specifically noted.” Department of Agriculture DR 5200-3, *Gift Acceptance Policy* (April 18, 2003). Under this definition the acceptance of free space would in fact be deemed a “gift” regardless of whether bargained for consideration was exchanged between the agency and the non-agency parties.

3.5.1 Promotional items provided by non-federal entity host of conference

Federal employees may accept promotional items provided by a non-federal entity in limited circumstances. Federal employees may not accept gifts given to them because of their official position or from a prohibited source. 5 C.F.R. § 2635.202(a).

Many promotional items may be allowable under the \$20 gift-rule exemption at 5 C.F.R. § 2635.204(a). The provision exempts gifts with an aggregate market of \$20 or less from the prohibition in 5 C.F.R. § 2635.202. The \$20 ceiling is an aggregate of all gifts received per occasion from one source. In addition, no employee may accept, from one source, gifts totaling more than \$50 in a calendar year. 5 C.F.R. § 2635.204(a).

3.6 Prizes Won at a Drawing at a Conference

While in many instances items given to a Federal employee are considered gifts, that definition does not include “rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee’s entry into the contest or event is required as part of his official duties.” 5 C.F.R. § 2635.203(b)(5). This exemption has two prongs. First, the prize contest must be open to the public. OGE has held that a contest will be considered open to the public where attendance at the conference is available to anyone without qualification or fee. *See* OGE Informal Advisory Memorandum 99 x 7. Second, participation in the contest or event must not be required as a part of the employee’s official duties. If either prong is not satisfied, the employee may not retain the prize. Instead, the employee may pay market value to the non-Federal entity for the item, accept it on behalf of his federal agency, or simply decline.

3.7 Miscellaneous Restrictions on Federal Logistical Support

DoD organizations receive requests for logistical support that many other agencies do not receive. For example, DoD may be asked to provide flyovers for events, to provide a static display of aircraft, to provide military members as escorts, or to provide military bands to provide entertainment. DoD has several regulations that restrict the type of logistical support that it may provide to events, including conferences, hosted by non-Federal entities. In addition to the restrictions described in the previous paragraphs in this chapter, the ethics counselor must consult these specific regulations.

DoD Directive 5410.18, *Public Affairs Community Relations Policy* (November 20, 2001), in paragraphs 4.2.19, 4.3.6.5, and 4.3.6.6, sets forth the process for requesting flyovers for events sponsored by non-Federal entities and the restrictions on this type of logistical support. Additional requirements are set by the Air Force in AFI 35-105, *Community Relations* (26 January 2010), paragraph 15.

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3.8 Application of Executive Order 13490's Lobbyist Gift Ban

In accord with the requirements of Executive Order 13490, all full-time, political appointees, regardless of whether they are appointed by the President, the Vice President, an agency head, or otherwise, must sign an ethics pledge before entering service. Paragraph one of the ethics pledge prohibits appointees from receiving gifts from any registered lobbyist or lobbying organization. This ban is in addition to the restrictions found at 5 C.F.R. Part 2635 on gift giving and acceptance, and therefore must also be considered by any covered employee.

While the pledge is more restrictive than 5 C.F.R. Part 2635, there are a few exceptions to the prohibition of gift acceptance by appointees from lobbyists. These exceptions include:

- a. gifts based on a personal relationship, 5 C.F.R. § 2635.204(b);
- b. discounts and similar benefits, 5 C.F.R. § 2635.204(c);
- c. gifts resulting from a spouse's business or employment, 5 C.F.R. § 2635.204(e)(1);
- d. customary gifts/gratuities provided by a prospective employer, 5 CFR § 2635.204(e)(3);
- e. gifts to the President or Vice President, 5 C.F.R. § 2635.204(j);
- f. gifts authorized by an OGE-approved agency supplemental regulation, 5 C.F.R. § 2635.204(k); and,
- g. gifts accepted under specific statutory authority, 5 C.F.R. § 2635.204(l).

However, certain exceptions that apply to gifts given by a prohibited source or on the basis of the individual's official position do not apply when the gift is given by a lobbyist. The exceptions that do not apply include:

- a. \$20 de minimis value, 5 C.F.R. § 2635.204(a);
- b. awards and honorary degrees, 5 C.F.R. § 2635.204(d);
- c. gifts resulting from the employee's own outside business or employment, 5 C.F.R. § 2635.204(e)(2);
- d. gifts from political organizations in connection with political participation, 5 C.F.R. § 2635.204(f);
- e. widely attended gatherings (WAG), 5 C.F.R. § 2635.204(g)(2);
- f. social invitations from non-prohibited sources, 5 C.F.R. § 2635.204(h); and
- g. food, refreshments and entertainment from persons other than a foreign government in a foreign area.

Thus, an appointee could not rely on the \$20 de minimis exception in 5 C.F.R. Part 2635 to accept promotional items from a source who is a lobbyist or registered lobbying organization. *See* OGE DAEogram DO-09-007, *Lobbyist Gift Ban Guidance*. Likewise, an appointee could not accept a gift of free admission on the basis that he is attending a widely attended gathering. *Id.* However, an appointee who is attending a co-sponsored or non-federally sponsored event may still receive gifts of free admission if the appointee is speaking or presenting information at the event. *Id.*

3.9 Specific Agency Guidance

Many non-Federal entities may have memberships comprised primarily of current and former civilian employees, current and former active duty military, families of active duty military, and current and former reservists. These organizations are so closely aligned with the interests of the Federal

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agency or military branch that both Government employees and organization members may fail to see the line between the two entities, especially when working together to host a conference. It is helpful to remind clients that organizations not specifically delineated have no special relationship or legal status with regard to the Government agency.

DoD has a special relationship with certain non-Federal entities, which are listed in the Joint Ethics Regulation, subsection 3-212. In addition to the provisions of the Joint Ethics Regulation, there are statutes and DoD directives that govern the relationship between DoD and the entities listed. If the co-sponsor of a convention is one of these entities, the additional statutes and directives should be consulted. Those organizations are:

- Certain banks and credit unions (DoD Instruction 1000.11)
- Support for Non-Federal Entities Authorized to Operate on DoD Installations (DoD Directive 1000.26E)
- Labor organizations (5 U.S.C. Ch. 71; DoD Instruction 1400.25, Ch. 711)
- Combined Federal Campaign (E.O. 10927; DoD Instruction 5035.01)
- DoD Instruction 1400.25, Volume 251
- American Registry of Pathology (10 U.S.C. § 177)
- Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. § 178)
- American National Red Cross (10 U.S.C. § 2552)
- Boy Scouts Jamborees (10 U.S.C. § 2554)
- Girl Scouts international events (10 U.S.C. § 2555)
- Shelter for homeless (10 U.S.C. § 2556)
- National military associations (assistance at national conventions) (10 U.S.C. § 2558)
- Assistance from American National Red Cross (10 U.S.C. § 2602)
- United Seaman's Service Organization (10 U.S.C. § 2604)
- Scouting (cooperation and assistance in foreign areas) (10 U.S.C. § 2606)
- Civil Air Patrol (10 U.S.C. §§ 9441-9442)
- Assistance for certain youth and charitable organizations (32 U.S.C. § 508)
- Military Department of each State and territory

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Chapter 4: Federal Agency Conferences

4.0 Introduction

A conference that is open only to Federal employees is not suitable for co-sponsorship.³⁶ It is considered to be an agency-hosted conference, but support from a non-Federal entity may be permissible. If a non-Federal entity seeks to contribute to a conference that is attended only by Federal employees, the ethics official should analyze the offer as the offer of a gift. An agency may be able to accept the contribution under the agency gift acceptance statute, if the agency has one.

4.1 Organizing a Government-Hosted Conference

4.1.1 Use of a contract to fund/organize a Government-hosted conference

4.1.1.1 Contract under the Federal Acquisition Regulation

For a discussion of this issue, see 2.1.1.1 of this guide.

4.1.1.2 No-cost contract

As contemplated by OLC and GAO,³⁷ a no-cost contract for event/conference planning is carefully constructed so as to avoid fiscal issues (especially for agencies without authority to charge, retain and use fees for conferences). A no-cost contract is a contract between a Government agency and a non-Federal entity in which the Government agency has no financial liability to the non-Federal entity and the non-Federal entity has no expectation of payment from the Government agency. In other words, no appropriated funds are used, committed, or obligated. Under this type of contract, the non-Federal entity is dependent on third parties for payment.

The fees collected under a no-cost contract cannot be used for the benefit of the host agency that hires the event planner. Further, the fees collected may not compensate the event planner for any contractual obligation that the host agency owes to it or enable the agency to avoid expending appropriations. If a no-cost contract fails to conform with the above two requirements, it will likely cause fiscal issues as GAO has held that an agency may not permit its agent to charge and retain registration fees where the agency itself lacks statutory authority to charge and retain such fees. *See Contractors Collecting Fees at Agency-Hosted Conferences*, 2006 U.S. Comp. Gen. LEXIS 2, B-306663 (January 4, 2006); *Matter of: National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp.

³⁶ HHS *Co-Sponsorship Guidance*.

³⁷ Memorandum Opinion for the General Counsel, Department of Commerce, *Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences*, 2006 OLC LEXIS 4, 30 Op. O.L.C. 1 (November 22, 2006); *Matter of: Scheduled Airlines Traffic Office, Inc.*, 1995 U.S. Comp. Gen. LEXIS 439, B-257292.9 (May 16, 1995); *Matter of: Downtown Copy Center*, 1992 U.S. Comp. Gen. LEXIS 1379, B-240488.8 (December 28, 1992); *Matter of: T.V. Travel, Inc. et al*, 65 Comp. Gen. 699, B-218198.6 (December 10, 1985).

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Gen. LEXIS 42, B-300826 (March 3, 2005). An agency must be careful in how it constructs a no-cost contract so as to avoid potential Antideficiency Act violations.

As stated in the chapter on co-sponsored conferences, a no-cost contract is a contract between a Government agency and a non-Federal entity in which the Government agency has no financial liability to the non-Federal entity and the non-Federal entity has no expectation of payment from the Government agency. In other words, no appropriated funds are obligated. Under this type of contract, the non-Federal entity is dependent on third parties for payment. In a GAO paper on no-cost contracts prepared for the 2008 Appropriations Law Forum, GAO stated that no-cost contracts were not governed by the Federal Acquisition Regulation (FAR).

In a 2007 opinion, GAO addressed a no-cost contract for conference planning services. *See No-Cost Contracts for Event Planning Services*, 2007 U.S. Comp. Gen. LEXIS 220, B-308968 (November 27, 2007). National Conference Services, Inc. (NCSI) asked GAO to review a model no-cost contract. NCSI provided conference planning services to Federal agencies, “primarily the Department of Defense (DoD) and the Intelligence Community (IC),” according to its web site. Under a no-cost contract, NCSI would provide conference planning services at no cost to the Government agency and “would recoup its costs by charging exhibitors, sponsors, and attendees of the conference.” B-308968, at 1. These services included selecting venues, coordinating logistics, marketing, and handling registration.

GAO concluded that this type of contract was a valid, binding contract and that agencies may use a no-cost contract to obtain conference planning services without violating the voluntary services prohibition of the Antideficiency Act, 31 U.S.C. § 1342. GAO stated, however, that it did “not opine on the wisdom of such arrangements for conference planning services.” B-308968, at 5. GAO advised that there are other considerations beyond compliance with fiscal laws that an agency should take into account before agreeing to a no-cost contract such as the one proffered by NCSI, including weighing the value of the services received from the contractor with that of the concessions given to the contractor. For example, an agency should consider the ultimate cost to the Government as a whole when most attendees are expected to be Government employees. Agency officials should also consider possible conflicts of interest before signing a no-cost contract, keeping in mind that control of the agenda, selection of speakers, and other matters concerning content should serve the Government’s, not the contractor’s, purpose. In addition, agencies should ensure an open, transparent selection process before entering into no-cost contracts. GAO said, “Ultimately, an agency must not lose sight of its objectives for a particular event and should ensure that in avoiding costs to the agency, it does not take actions that compromise the effectiveness of its conference, undermine the achievement of agency goals, or violate ethics rules.” *Id.* at 5-6.

GAO also advised agencies that they should take into account other considerations before they enter into this type of contract. GAO specifically referred to ethics issues. In the case of NCSI, their corporate exhibitors include defense contractors Raytheon, Lockheed Martin, Northrop Grumman, General Dynamics, Booz Allen Hamilton, and SAIC, among others.

4.1.2 Interagency Agreements

In some situations, agencies may desire to work together to co-host a conference. To facilitate a shared conference, agencies may want to create an Interagency Agreement (IAG) to determine how to share costs and obtain goods or services needed for the conference. An IAG

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takes the form of a written agreement between Federal agencies or components of Federal agencies to acquire supplies or services. Department of Homeland Security Directive No.125-02, Interagency Agreements, August 15, 2008. There are two types of IAGs: IAGs authorized pursuant to the Economy Act and Cooperation Authority IAGs authorized pursuant to an agency-specific statute.

4.1.2.1 IAGs Authorized Pursuant to Economy Act

The Economy Act, 31 U.S.C. §§ 1535 and 1536 (48 C.F.R. § 17.5), permits a federal agency to provide goods or services to another federal agency, or to an account within the same agency, on a reimbursable payment basis. B-301561, June 14, 2004; see also GSA's Interagency Transactions FAQ.³⁸ The Act governs interagency transactions when there is no other, more specific, authority for the transaction. 59 Comp. Gen. 415, 416 (1980). It authorizes the head of an agency or major organizational unit within an agency to place an order with another agency for goods or services. 31 U.S.C. § 1535(a). IAGs under the Act are used to "acquire" services or property from one federal agency for the direct use by another federal agency. 31 U.S.C. § 1535(a); see also EPA's Best Practices Guide for Conferences (Nov. 28, 1998). The agency may not, however, use an IAG to circumvent existing conditions or limitations on the use of funds, or to make acquisitions that conflict with another agency's authority or responsibility. 48 C.F.R. § 17.501.

To be eligible, both federal agencies must be responsible for conducting the proposed activities and must be authorized to use their appropriations for the work. Eligible agencies are referred to as the "requesting agency" and "servicing agency" to identify the parties to the agreement. The requesting agency is defined as the "agency that has the requirement for an interagency acquisition" and the servicing agency is defined as the "agency that will conduct an assisted acquisition on behalf of the requesting agency." The servicing agency is required to fully recover any expenses it spends in conjunction with an IAG; the agency may not profit from the transaction. 48 C.F.R. § 2.101(b).

To use an IAG, the head of the requesting agency must, among other requirements, decide that the order is in the best interest of the United States Government and that the goods or services cannot be provided by contract as conveniently or cheaply by a commercial provider. 31 U.S.C. § 1535. As a result, each Economy Act IAG must be accompanied by a determination and finding (D & F) that establishes that the IAG is in the best interest of the Government and the supplies or services cannot be obtained as conveniently by contracting directly with a private source. 48 C.F.R. § 17.502-2. The D & F must be approved by a Contracting Officer Technical Representative (COTR) of the requesting agency or by another official designated by the agency head. If the agency is not covered by the Federal Acquisition Regulations (FAR), approval of the D & F may not be delegated below the senior procurement executive of the requesting agency. 48 C.F.R. § 17.502(c)(2).

The requesting agency is tasked with preparing the D & F, which must be memorialized in a document acceptable to both agencies. It must include a description of the supplies or services, requested delivery requirements, a funds citation, and a payment provision. The requesting and servicing agencies should also agree to a procedure for the resolution of disagreements. If the acquisition requires the servicing agency to award a contract, the servicing agency may need to issue an approval or a D & F, and the requesting

³⁸ Available at <http://www.gao.gov/special.pubs/appforum2005/transactions.pdf>.

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agency should provide any necessary information required. The requesting agency is responsible for providing any other necessary assistance, such as providing information or contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency. The servicing agency is also responsible for complying with all other legal or regulatory requirements pertaining to the contract, such as complying fully with bid competition requirements. If the servicing agency is not subject to the Federal Acquisition Regulation (FAR), the requesting agency must verify that the contracts contain provisions protecting the Government from inappropriate charges and that adequate contract administration will be provided. *See* 48 C.F.R. § 17.503.

The servicing agency may ask, in writing, for advance payment for all or part of the estimated cost. Adjustment based on actual costs should be made as agreed to by the agencies. Payment for actual costs can be made by the requesting agency after supplies or services are provided. If the Economy Act order requires the use of a contract by the servicing agency, the servicing agency should not require (and nor should the requesting agency pay) any fee or charge in excess of the actual cost (or estimated actual cost) of entering into the contract under which the order is filled. *See* 48 C.F.R. § 17.502-2(d).

4.1.2.2 Cooperation Authority IAGs

Where an agency has specific statutory authority to enter into an IAG, they will often use the applicable Cooperation Authority IAG in lieu of the more general Economic Act IAG. This stems from the fact that an agency that takes funds pursuant to specific statutory authority is not required to deobligate those funds once the period of availability ceases. This type of IAG involves mutual cooperation and investment of resources between the cooperating federal agencies with an overlapping mission and interest in the project. EPA's Best Practices Guide for Conferences (November 28, 1998). Agencies can contribute resources jointly, whether salaries, equipment, travel or contract services, to a conference. *Id. See generally Transfer of Fiscal Year 2003 Funds from the Library of Congress to the Office of the Architect of the Capitol*, B-302760 (May 17, 2004); *Independent Statutory Authority of Consumer Product Safety Commission to Enter Into Interagency Agreements*, B-289380 (July 31, 2002); *Continued Availability of Expired Appropriation for Additional Project Phases*, B-286929 (April 25, 2001); *Federal Aviation Administration and Department of Health, Education, and Welfare—Services Between—Appropriation Obligation*, 51 Comp. Gen. 766, B-175783 (May 22, 1972).

4.1.3 Use of a cooperative agreement with non-Federal entity and Government-hosted conferences

A cooperative agreement under 31 U.S.C. § 6305 is not an appropriate instrument to use to fund a government-hosted conference. Any support services that an agency obtains from a non-Federal entity for organizing a conference provides a direct benefit to the agency. 31 U.S.C. § 6303 requires that the agency use a contract, not a cooperative agreement, in these circumstances. In 1997, the Comptroller General issued an opinion in response to a request from the Inspector General of the EPA about the use of a cooperative agreement for an EPA conference. *Matter of: Environmental Protection Agency—Inspector General—Cooperative Agreement—Procurement*, 1997 U.S. Comp. Gen. LEXIS 202, B-262110 (March 19, 1997). The EPA had entered into a cooperative agreement with the University of Kansas to provide management services for the EPA's National Environmental Information Conference. The Assistant Regional Administrator chose this method to fund the conference. The amount awarded was approximately \$533,000. The

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attendees included EPA employees, employees of other Federal agencies, and representatives from non-Federal entities. The University of Kansas used some of the funds to pay the cost of travel, lodging, and meals for 171 of the non-Federal attendees. The Comptroller General noted that these expenditures would not have been permitted if a contract had been used. Appropriated funds could not be used to pay the travel and related expenses of the non-Federal attendees of this conference.

In its opinion, the Comptroller General agreed with the Inspector General that the EPA used an improper funding vehicle for the conference. The EPA should have used a contract because the support services that the University provided were a direct benefit to the EPA, within the meaning of 31 U.S.C. § 6303. The Comptroller General disagreed with the Inspector General about requiring the certifying official for the EPA or the University to reimburse the EPA. The Comptroller General determined that the certifying official had acted in good faith and was entitled to rely on the Assistant Regional Administrator's choice of funding instrument.

4.2 Co-Located Conferences and Events

Different from both co-sponsoring a conference and providing support to a non-Federal entity's conference is the situation in which a non-Federal entity holds an event at a location near a Government conference, and the attendees of the Government conference are invited to attend the non-Federal entity's event. Welcome receptions and training sessions are typical of events often hosted by professional associations of which Government employees may be members. Interactions with these organizations can be important for various reasons, such as retention and promotion and scientific collaboration or the agency may be mandated by law to interact with the entity. For some agencies there may be further requests from the outside entity for support in areas such as equipment. DoD refers to this type of support as "logistical support."

Regardless of the label applied to these types of events, the Standards of Ethical Conduct for Employees of the Executive Branch apply to co-located events. When a conference hosted by a Federal agency is co-located with a conference hosted by a non-Federal entity or when a non-Federal entity requests logistical support, a number of issues are likely to arise. Some of those issues are discussed below.

4.2.1 Leave and attendance

Many Federal employees belong to professional organizations related to the work they perform for the Government. When a Federal employee wishes to perform duties or attend sessions or events of the co-located professional association's conference, questions related to the use of leave may arise. Although they are attending the agency-hosted conference in an official capacity, they may not be able to attend the co-located event in an official capacity.

The decision whether to grant leave or permissive temporary duty (TDY) is a commander's or supervisor's decision, but they will often ask their legal counsel for advice. The employee's duty status will determine what restrictions he faces. The table on the following page (which is based on an EPA presentation on professional associations) describes the restrictions on employees who participate in activities of co-located events, restrictions that vary depending upon whether the employee is on official time and whether he is in an official duty status.

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Table 2 ([html version](#))

On official time and official duty	<ul style="list-style-type: none"> - Might need supervisor approval - Cannot serve in management position without agency approval and 18 U.S.C. § 208(b)(1) waiver - Cannot fundraise - Cannot represent association back to the Government - Cannot be paid - Cannot engage in prohibited Hatch Act activities
Not on official time and not official duty	<ul style="list-style-type: none"> - May need outside activity approval - May be paid if not related to official duties [Certain Government employees have limits on the amount, if any, of outside earned income they may receive] - Cannot represent association back to the Government - Some Hatch Act restrictions - Can be an officer without reference to official position or title
On official time but not official duty	<ul style="list-style-type: none"> - May be allowed with supervisor approval - Must abide by agency policy on use of Government resources - May need outside activity approval - May be paid if not related to official duties [Certain Government employees have limits on the amount, if any, of outside earned income they may receive] - Cannot represent association back to the Government - Some Hatch Act restrictions - Can be officer if no reference to official position or title, or if reference is only one of several biographical details

Some executive branch agencies have regulations, guidance, or policies that allow employees to attend professional association events while on official duty. For example, the Air Force instruction on leave, AFI 36-3003 *Military Leave Program* (amended by Air Force Guidance Memorandum 27 April 2012), authorizes a unit commander to grant permissive TDY to military members attending certain types of conferences. Following is a list of those conferences. The rules are found in Table 7 to the instruction:

- Meetings/seminars sponsored by non-Federal technical, scientific, professional (e.g., medical, legal, ecclesiastical, IT, and mechanical) societies and organizations (Rule 14)
- National conventions/meetings hosted by service-connected organizations such as the Air Force Sergeants Association and the Non-Commissioned Officers' Association (Rule 22)

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- Civil Air Patrol conferences as instructors, advisors, or liaisons (Rule 23)
- Ecclesiastical conferences (permissive TDY available to chaplains only) (Rule 26)
- Conference of non-sectarian youth organizations (permissive TDY available if military member is participating as an instructor or staff member of the organization) (Rule 29)

Most of these rules have additional restrictions not restated in this guide. Air Force personnel must consult the AFI in order to ensure that all of the requirements are met before advising commanders about the use of permissive TDY to attend a conference hosted by a non-Federal entity.

4.2.2 Wear of the uniform for uniformed services at a co-located event

Federal agencies will have policies on when personnel can and cannot wear the uniform of that agency, and those policies should be consulted. Federal employees may not wear a Government uniform to further political activities, private employment, commercial interests, or when Government endorsement of the private organization activity may be implied by wearing the uniform.

Generally, military members in a duty status and participating in an activity as a Federal employee, and not as a member of the professional association, may wear a military uniform to a co-located professional association event.

4.3 Reserved

4.4 Reserved

4.5 Registration Fees

4.5.1 When the agency may collect and retain the fee

An agency may collect and retain fees from persons attending an agency-sponsored conference if there is a Federal statute that authorizes the agency to do so, e.g. the Economy Act, the GETA, or other specific agency authority. *Contractors Collecting Fees at Agency-Hosted Conferences*, 2006 U.S. Comp. Gen. LEXIS 237, B-306663 (January 4, 2006); *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 7 (March 3, 2005).

4.5.2 When the non-Federal entity may collect and retain the fee

A non-Federal entity that is providing meals, lodging, refreshments, or other goods or services to conference attendees may collect a fee from the conference attendees to cover its costs in providing such goods and services and may keep the fees that it collects. However, an agency cannot use a non-Federal entity to collect a fee for the agency that the agency could not collect for

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itself. OLC reached this conclusion in a 2006 opinion it issued in response to a question from the Department of Commerce. Agencies should proceed cautiously in this area as the opinion applies to no-cost contracts, has limited applicability, and lays out stringent requirements. *See* Memorandum Opinion for the General Counsel, Department of Commerce, *Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences*, 2006 OLC LEXIS 4, 30 Op. O.L.C. 1 (November 22, 2006).

The Department of Commerce asked OLC to address the issue of whether fees charged and collected by a non-Federal entity to cover its costs in providing the above-described goods and services were subject to the Miscellaneous Receipts Act (MRA), 31 U.S.C. § 3302(b). The MRA provides that:

[A]n 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.

OLC reasoned that when a non-Federal entity is recouping its costs, rather than the Government's costs, when it charges a fee for meals, lodging, and refreshments that it provides to attendees, the non-Federal entity may keep the fees it collects. Under these circumstances, the fees are not collected "for the Government," as required by the MRA. Instead, they are collected "for" the non-Federal entity.

In 2005 and in 2006, the Comptroller General issued two opinions in which it indicated that such fees were subject to the MRA and a non-Federal entity could not retain these fees. *See Matter of: National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 (March 3, 2005); *Contractors Collecting Fees at Agency-Hosted Conferences*, 2006 U.S. Comp. Gen. LEXIS 237, B-306663 (January 4, 2006). OLC did not attempt to distinguish these two opinions from its decision. OLC noted that in the 2005 opinion the Comptroller General did not explain why the non-Federal entity would be considered an official or agent of the Government in receiving payment for services that it (the non-Federal entity) provided. With regard to the 2006 Comptroller General opinion, OLC simply restated the finding—that if an agency does not have statutory authority to charge a fee at a conference and retain the fee, neither the agency nor a contractor on its behalf may do so. GAO specifically agrees with OLC's distinction between the non-Federal entity recouping its own costs rather than collecting for the Government, and the rationale OLC applied to the issue before it. *See No-Cost Contracts for Event Planning Services*, 2007 U.S. Comp. Gen. LEXIS 220, B-308968 at 4 (November 27, 2007). *See also* the summary of this case at 4.1.1.2 of this guide.

The user fee statute, 31 U.S.C. § 9701, does not provide agencies with authority to retain fees collected. In B-300826 (March 3, 2005), GAO stated:

Our decisions have not addressed specifically whether the user fee statute authorizes an agency to charge a conference registration or attendance fee, and we need not address that question here. Even if we were to conclude that the user fee statute would permit [an agency] to charge a registration fee, we are aware of no specific authority that would permit [the agency in this case] to retain the proceeds.

See also Pension Benefit Guaranty Corporation—Reimbursement for Financial Analysis Services, 2007 U.S. Comp. Gen. LEXIS 45, B-307849 (March 1, 2007); *SBA's Imposition of Oversight Review Fees on PLP Lenders*, 2004 U.S. Comp. Gen. LEXIS 13, B-300248 (January 15, 2004).

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4.5.3 Specific Agency Guidance

Many agencies have written guidance on the collection of fees. *See, e.g.*, Conference Support/Collection and Retention of Registration Fees under Contract, NIH Policy Manual 6031 (January 28, 2008).

10 U.S.C. § 2262 authorizes DoD to collect fees in advance, either directly or by using a contract (including a no-cost contract), from “any individual or commercial participant” attending DoD conferences. For purposes of 10 U.S.C. § 2262, the term “conference” also applies to “a seminar, exhibition, symposium, or similar meeting conducted by the Department of Defense.” The statute does not define these terms. Under this statute, DoD may collect fees from agency employees, employees of other Federal agencies, and non-Federal persons, such as state and local government employees and private sector employees, attending a DoD conference. The implementing regulation is DoD Financial Management Regulation, Vol. 12, Ch. 32 (July 2009).

If DoD collects the fees directly, the amounts collected are credited to the appropriation or account from which the costs of the conference are paid and must be used to pay or reimburse those costs of the Department with respect to the conference. In the case of fees collected under a contract for conference planning, organizing, or management, the fees should be structured so as not to exceed the cost of the conference. The costs of a conference include the actual costs incurred by the contractor, including its fee. Amounts that are collected in excess of costs are to be deposited in the Miscellaneous Receipts Account of the U.S. Treasury.

The components within DoD may have additional guidance on registration fees for service-sponsored conferences. For example, the Air Force addresses this issue in paragraph 4.55 of Air Force Instruction 65-601, Vol. 1, *Budget Guidance and Procedures* (16 August 2012). According to this paragraph, the Air Force is permitted to hire a contractor, through normal acquisition procedures, to handle the administrative arrangements for a conference. The contractor may charge attendees a registration fee to cover the costs associated with the contract, “including a reasonable profit.” If a contractor is used, the contractor collects the registration fees from the attendees (DoD personnel, non-DoD Federal personnel, and non-Government personnel). For Air Force attendees, the registration fee collected under these circumstances is reimbursable and may be claimed on their travel vouchers. The AFI cautions that if the registration fee includes any meals, those meals must be deducted from the authorized per diem.

Under DoD Financial Management Regulation, paragraph 320202, if a DoD component uses a contract for conference planning, organizing, or management, the DoD component may provide for the collection of fees in that contract. This regulation permits DoD components to collect fees “by contract, to include contractors under no-cost contracts.”

4.6 Travel Expenses for Non-Federal Attendees

See the discussion at paragraph 2.6 of this guide.

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4.7 Providing Meals, Snacks, and Refreshments

4.7.1 Federal employees at their official duty station

Generally, appropriated funds may be used to pay for meals and refreshments only if there is a statute that authorizes the use of appropriated funds for this purpose. *See, e.g., Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266 at 4-5 (January 27, 2003) (citing *United States v. MacCollom*, 426 U.S. 317, 321 (1976)); *Matter of: Corps of Engineers—Use of Appropriated Funds to Pay for Meals*, 72 Comp. Gen. 178, B-249795 (May 12, 1993). This does not mean that the statute must specifically delineate that appropriations be set aside specifically for food and refreshments; however, appropriations used for food and refreshments must fall within the approved authority, and must further public purposes, not solely the personal interests of the employees. *Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266 at 4-5 (January 27, 2003). For example, when the conference qualifies as training that meets the requirements of the GETA, 5 U.S.C. §§ 4101-4118, agencies may reimburse food expenses incurred by attendees at training programs located at their duty stations, pursuant to 5 U.S.C. § 4109. The GETA also permits refreshments and meals to be provided by an agency using appropriated funds, pursuant to 5 U.S.C. § 4110, so long as:

(1) meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important for the host agency to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the meals and refreshments and discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 7 (March 3, 2005).

For the purpose of 5 U.S.C. § 4110, the conference need not be conducted for training purposes, but should be related to the agency's authorized functions. *See Reimbursement for Costs of Attending Certain Banquets*, 17 Op. O.L.C. 70 (1993). These criteria assure that the funds are being used to further the basis of the conference, and not simply to provide employees with a meal. *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 7 (March 3, 2005). If the meal does not meet these criteria, the employee "is expected to bear the cost of . . . meals and refreshments, from his or her salary." *Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266 at 4-5 (January 27, 2003). An agency may charge a fee to disperse the cost of such refreshments only if they have statutory authority to charge such a fee. *National Institutes of Health—Food at Government-Sponsored Conferences*, 2005 U.S. Comp. Gen. LEXIS 42, B-300826 at 7 (March 3, 2005). Such authority must specifically allow for the agency to charge, and retain the proceeds of, such a fee. *Id.* at 8.

Further, GAO and OPM have recognized a specific exemption from requiring statutory authority to use appropriated funds to provide food to Federal employees, when a sampling of ethnic food is prepared and served as an essential educational element to an event created to further agency EEO objectives through increasing employee appreciation of the cultural heritage of that particular ethnic group. *See U.S. Army Corps of Engineers, North Atlantic Division—Food for a Cultural Awareness Program*, B-301184 at 2-4 (January 15, 2004); *Army—Food Served at Cultural Awareness Celebration*, B-199387 (March 23, 1982). Agencies should ask: (1) Is the food part of a formal program intended by the agency to advance EEO objectives and to make the

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audience aware of the cultural or ethnic history being celebrated? (2) Does the food provided constitute a meal, or is it a sample of the food of the culture offered as part of the larger program to serve an educational function? This exception only applies if (1) the food is provided as a part of larger formal program which intends to promote cultural understanding and advance EEO objectives, and (2) the food is a sample which is not intended to replace, or which does not constitute, a meal. *Id.* Whether samples are considered a meal or not is determined by the circumstances of the event, the time of day, the amount of food, the type of food, and whether the food is served as a part of an educational context. *U.S. Army Corps of Engineers, North Atlantic Division—Food for a Cultural Awareness Program*, B-301184 at 2-4 (January 15, 2004). Even if the food is served in furtherance of advancing EEO objectives, if the food qualifies as a meal, appropriated funds cannot be spent on it without some other statutory authority. *Id.*

Appropriated funds may be used to pay for meals for those federal employees who are on travel orders. *See* 41 C.F.R. § 301-74.11. The costs of refreshments provided do not have to be deducted from the employees per diem. Those employees must, however, deduct the cost of meals provided at the conference from their per diem when they file their travel voucher.

4.7.2 Federal employees away from their official duty station

Appropriated funds may be used to pay for meals and refreshments for federal employees away from their official duty station. By statute, a per diem allowance that includes meals and related incidental expenses is authorized for government employees "when traveling on official business away from the employee's designated post of duty or away from the employee's home." 5 U.S.C. § 5702. Meals and related incidental expenses are allowed when the employee performs official travel "away from [the employee's] official station." 41 CFR 301-11.1. This regulation defines official station as the corporate limits of the city or town of the employee's permanent work assignment. *See Matter of Ollice C. Holden*, 2000 GSBFA LEXIS 61 (February 24, 2000) (denying a per diem allowance for lodging incurred in the same city as the employee's designated post despite the hardship requiring the employee to travel home each night would cause).

4.7.3 Non-Federal Attendees

The government may provide meals, snacks and refreshments to non-Federal attendees if there is specific statutory authority or the non-Federal attendee's presence is necessary to an agency function. Although specific statutory authority may vary between agencies, 5 U.S.C. § 5703 and 5 U.S.C. § 4101 *et seq.* authorize food expenditures for non-Federal attendees at official training programs when the attendee is an event speaker or has been invited by an agency to participate without pay.³⁹

Where an agency does not have specific statutory authority to provide meals to non-Federal attendees, the agency must demonstrate the "expenditures are an essential, constituent part of accomplishing an authorized agency function." *Matter of Forest Service—Light Refreshments for National Trails Day*, 2008 U.S. Comp. Gen. LEXIS 71, B-288266, at 5 (January 27, 2003) (citing *Matter of Refreshments for Jurors*, 57 Comp. Gen. 806, B-192323, at 5-9 (September 20, 1978)). In *Forest Service*, the Comptroller General concluded that providing light refreshments to non-Federal attendees at a National Trails Day event did not contribute materially to the accomplishment of an agency function. 2008 U.S. Comp. LEXIS at 6-7. There, the proposed goal of the event was to increase use of recreational facilities. *Id.* at 7. The Comptroller General ruled

³⁹ *See also* HHS Co-Sponsorship Guidance.

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the Forest Service did not demonstrate how providing refreshments to attendees contributed to that purpose. *Id.*

Conversely, in *Matter of Veterans Benefits Administration—Refreshments for Focus Groups*, the Comptroller General ruled the Veterans Benefits Administration (VBA) could pay for refreshments to non-employee veterans and their families who participate in focus groups. 2005 U.S. Comp. Gen. LEXIS 199, B-304718, at 5 (November 9, 2005). VBA is required by statute to measure and evaluate the effectiveness of its programs. *Id.* at 4. Because the food was necessary to obtain the required focus group participation, the Comptroller General approved funds for light refreshments and meals. *Id.* at 11. *See also Matter of U.S. Army Garrison Ansbach—Use of Appropriated Funds to Purchase Food for Participants in Antiterrorism Exercises*, 2009 U.S. Comp. Gen. LEXIS 50, B-317423, at 9-10 (March 9, 2009) (ruling the Army may provide meals to non-Federal participants in terrorism training exercises when the meals are “essential to accomplishing the required training and to simulating realistic antiterrorism scenarios”); *Matter of Refreshments for Jurors*, 57 Comp. Gen. 806, B-192323, (September 20, 1978) (denying funding for food and refreshments for non-sequestered jurors because the jurors already had access to a snack bar).

4.7.4. Ceremonies

As a general matter, the government may not provide food or refreshments to Federal employees. *See Matter of Provision of Meals on Gov’t Aircraft*, 65 Comp. Gen. 16, B-218672, at 2 (October 17, 1985) (noting that food and refreshments are not typically a “necessary expense of the agency”). The government, however, may provide food to attendees at a government ceremony when there is specific statutory authority. *See Matter of Refreshments at Awards Ceremony*, 65 Comp. Gen. 738, B-223319, at 2-3 (July 21, 1986). The Government Employees' Incentive Awards Act is one source of this statutory authority. *See* 5 U.S.C. § 4501-06. In particular, 5 U.S.C. § 4503 authorizes an agency to “incur necessary expense for the honorary recognition” of outstanding employees.⁴⁰ Therefore, determining whether an agency may provide food and refreshments at a ceremony depends on whether these provisions are a necessary expense.

Because the statute does not define “necessary,” agency decisions offer the most useful guidance. The Comptroller General has explained, “the concept is a relative one: it is measured not by reference to an expenditure in a vacuum, but by assessing the relationship of the expenditure to the specific appropriation to be charged or, in the case of several programs funded by a lump-sum appropriation, to the specific program to be served.” *Matter of Refreshments at Awards Ceremony*, 65 Comp. Gen. 738, B-223319 at 4 (July 21, 1986). In the same opinion, the Comptroller General stated an agency may provide food and refreshments when refreshments “would materially enhance the effectiveness of its awards ceremony.” *Id.* at 6.

In a 1969 decision, the Comptroller General approved a \$60,000 expenditure by NASA to provide food during a ceremony honoring the Apollo 11 crew. *Comments on NASA Payment for Apollo 11 Banquet*, B-167835, at 2 (November 18, 1969). In approving the large sum, the Comptroller General noted President Nixon would be presenting awards to the crew in front of delegates from over 90 foreign nations. *See id.* at 1. In a later 1986 opinion, the Comptroller

⁴⁰ The statute authorizes recognition of an employee who “by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or performs a special act or service in the public interest in connection with or related to his official employment.” 5 U.S.C. § 4503.

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General approved a food expenditure for a smaller awards banquet held in honor of outstanding Social Security Administration employees. *See Matter of Refreshments at Awards Ceremony*, 65 Comp. Gen. 738, B-223319 at 6. There, the Comptroller General rested its decision largely on the agency's determination that the refreshments substantially improved the "effectiveness" of the ceremony. *See id.* This opinion explicitly deviated from a prior 1974 decision that indicated refreshments at a career service banquet of the Federal Home Loan Bank Board could not be funded from the agency's general operating budget. *See Payment of Career Service Award Ceremony Expenses*, B-114827, at 1 (October 2, 1974).

Individual executive branch agencies and departments have implemented additional guidance concerning food and refreshments at awards ceremonies. The Department of Defense allows food expenditures at awards ceremonies only where the award recipients are federal employees or military members, the award recipients are publically recognized, and the food materially advances the recognition of the recipient. Department of Defense, *Ethics Counselor's Deskbook: Fiscal Law Overview* at page 17 (10th Ethics Counselor's Course). In addition, a 2011 Navy memo on awards ceremonies notes, "the amount of money spent on the refreshments should be commensurate with the significance of the award." Naval Air Warfare Center Weapons Division, *Funding Guidance for Teammate Appreciation Month*. Finally, the U.S. Department of Agriculture allows appropriated funds to be used for "light refreshments" at government ceremonies, but the food expenditures must "not constitute meals; they must be of nominal value and incidental to the recognition event, simply enhancing the overall program." Natural Resources Conservation Service, *Purchase of Food with Appropriated Funds* (2009). Examples of light refreshments include "coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins." *Id.*