

LEVERAGING RESOURCES

UNITED STATES DEPARTMENT OF COMMERCE
2021



ETHICS LAW AND PROGRAMS DIVISION
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics

LEVERAGING RESOURCES

APPLICABLE LAWS AND POLICIES

The Department of Commerce has the important responsibility of promoting job creation, economic growth, sustainable development, and improved living standards for Americans by promoting U.S. competitiveness in the global market place; promoting the use of cutting-edge science and technology; and providing effective management and stewardship of the nations resources and assets to ensure sustainable economic opportunities.

Appropriated funds for such activities are at times insufficient for purposes of conducting all programs or initiatives that would help further office goals. There are some alternatives to relying on appropriated funds. However, there are restrictions on such alternative methods and there are procedures that must be followed when using these methods. This handout provides some guidance on the options available to Department officials regarding leveraging resources.

For advice about laws and policies regarding leveraging resources, contact the:

- Ethics Law and Programs Division – regarding gifts to an agency
ethicsdivision@doc.gov or 202-482-5384
- Contract Law Division – regarding no-cost contracts
contact the Contract Attorney that services your agency or 202-482-5384
- Federal Assistance Law Division – regarding Federal assistance and grants
202-482-8035.
- General Law Division – regarding joint projects and user fees
202-482-5391.

United States Patent and Trademark Office – The Office of the Assistant General Counsel for Administration in the Office of the Secretary's Office of General Counsel and the United States Patent and Trademark Office General Counsel's Office share responsibility for advising USPTO employees on some of the topics covered in this summary.

GIFTS AND CONTRIBUTIONS

The Department of Commerce and each of its components has legal authority to accept gifts from non-Federal sources to support an agency program or mission. However, there are some restrictions on this authority and when using this authority, certain procedures must be followed, as explained below.

AUTHORITY FOR OPERATING UNITS TO ACCEPT GIFTS

A statute provides the Department with authority to accept property through gift or bequest to further an agency mission. In addition, the Bureau of Industry and Security (BIS) and International Trade Administration (ITA) have authority to accept contributions under the Mutual Education and Cultural Exchange Act (MECEA) and the National Oceanic and Atmospheric Administration (NOAA) has authority to accept gifts for national marine sanctuaries. The standards below apply regardless of the legal authority used.

Standards for Accepting a Gift. Gifts may be accepted by a Department component, provided that:

- the gift furthers an agency program (which generally means that it must be for a purpose for which the agency has authority);
- it is really a gift, meaning it is not a payment in exchange for a benefit; and
- acceptance would not cause a reasonable person to question the integrity of agency programs, which means that (in most circumstances) the gift is *not* from:
 - an agency* contractor (or someone bidding on a contract),
 - an agency* grantee or (or a grant applicant),
 - a licensee of the agency* (or license applicant),
 - a member of an industry sector regulated by the agency,* or
 - someone with an interest in a controversial matter before the agency.*

The Department only has authority to accept “property” and not services. This authority does allow agencies to accept funds and in-kind donations of tangible items, which may include food and beverages, hotel or meeting rooms, transportation, but not volunteer services (unless there is additional legal authority for acceptance of such services). (Also see below regarding gifts in support of official travel of a Federal employee.)

** “Agency” is an operating unit, in most cases; however for the Office of the Secretary, it is the Department of Commerce; for the National Oceanic and Atmospheric Administration, it is the line office, except that for the Office of Oceanic and Atmospheric Research gifts may be accepted from OAR contractors grantees in some cases based on the totality of the circumstances; and for travel gifts to the National Institute of Standards and Technology, it is the applicable Laboratory for travel for a Laboratory Program employee or the applicable program or partnership for travel of an Innovation and Services employee.*

OFFICIALS AUTHORIZED TO APPROVE GIFTS

In some cases acceptance of a gift must be approved by the Secretary or by the Chief Financial Officer and Assistant Secretary for Information. Otherwise, a gift may be approved by the head of the Operating Unit or Secretarial Office or someone to whom such authority has been delegated.

Approval by the Secretary of Commerce. A gift must be approved by the the Secretary of Commerce, if the value is \$35,000 or more.

Approval by the Chief Financial Officer and Assistant Secretary for Administration. A gift must be approved by the Chief Financial Officer and Assistant Secretary for Administration, if

- the gift is of real property (real estate);
- there is a condition that the Department or agency undertake activities or expenditures that are not part of regular operations;
- there are conditions imposed on the Department or agency regarding deposit, investment, or management of donated funds;
- administration or use of the donated funds or property will require expenditure of more than incidental funds;
- the gift is an in-kind donation for official travel the value of which is \$500 or more, greater than that authorized by the Department’s Travel Handbook (or Federal Travel Regulations).

SOLICITING GIFTS AND SEEKING SUPPORT FOR AGENCY PROGRAMS

Department officials may contact companies, organizations, and others outside the Federal Government to ask for gifts, contributions, and support (except that solicitations cannot be made in for travel expenses of Federal employees; see page 6 below). Guidelines for a solicitation program are provided below, but a specific plan for soliciting support should be discussed with an attorney in the Ethics Law and Programs Division (202-482-5384) to ensure it is consistent with Department policy.

An agency plan to seek funding or other support from sources outside the Government must be consistent with the following guidelines.

Note that the term “sponsor” is often used to identify a donor, contributor, or other entity that is providing support to a Government event, but it is a term also sometimes used to describe the host or organizer of an event. To avoid any misunderstanding, the term “sponsor” is not used in this summary but can be used to identify contributors or donors in public acknowledgments by an agency.

GUIDELINES FOR SEEKING FUNDS OR OTHER SUPPORT FROM NON-FEDERAL ENTITIES

1. **No Solicitations for Support from Improper Sources of Gifts.** Gifts and contributions cannot be sought from anyone from whom a gift cannot be accepted under the Department's gift policy, such as an agency contractor or grantee or someone with an interest in a controversial matter pending before the agency.

2. **No Preferential Treatment.** Solicitations must be conducted on a non-preferential basis. This means that, because participation in a program as a donor may be considered a benefit, a broad range of members of a particular industry sector or geographic area should be given the opportunity to participate. This can best be ensured by directing solicitations to broad-based groups or a wide range of companies or organizations.
 - **Broad-based Organizations** – The best means to ensure fairness is to solicit support from groups that represent a broad range of members of an industry sector (trade associations) or geographic area (chambers of commerce). Gifts from such sources are unlikely to be perceived as favoring any member of the group. However, if the group represents an industry that is identified with a particular position on a matter pending before the agency in opposition to a position taken by another group, it is best to solicit from both groups.
 - **Solicitations through Broad-Based Organization** – Solicitations may also be made to individual companies through broad-based groups, in which case the contributions would not be from the organization itself but from the individual members. Agency officials engaged in such a solicitation program would ask the broad-based organization to contact its members on behalf of the agency for contributions or gifts for a particular event or program.
 - **Solicitations to a Wide Range of Members of a Group** – An alternative to soliciting support from a broad-based group or through a broad-based group is to solicit directly from individual companies, firms, organizations, institutions, or other entities. If this method of soliciting contributions and gifts is used, it is important to solicit from a broad range of firms within the industry or geographic area targeted.

3. **No Exclusivity** – Donors cannot be promised exclusivity regarding sponsorship. For example, an agency employee cannot promise a donor that the agency will not accept support from a competing company so that the original donor would be the only donor from its industry sector. If only one sponsor is needed for an event, there should be an objective means for determining the donor if there is more than one prospective donor interested in serving as a sponsor to that event, such as choosing the first to offer or choosing randomly from a list of those who have offered to pay for the event. If a sponsor for the specific event is solicited, the solicitation must be broad-based (see Number 2 above).

**GUIDELINES FOR SEEKING FUNDS OR OTHER SUPPORT FROM
NON-FEDERAL ENTITIES
(continued)**

4. **No Special Benefits to Donors** – Donors cannot be promised any substantive benefits not available to non-donors with regard to either the event or program to which they are donating or with regard to other agency activities.

Benefits to donors cannot include:

- special access to Department officials, such as through a “sponsor’s reception” or photo opportunities or individual meetings with Government officials;
- special access to information, such as a special briefing on agency programs, although donors may be briefed on plans for the event in question and the uses of the donor’s contribution;
- a role in the event, such as keynote speaker, introducer of a speaker, or presenter of an award; or
- the opportunity to distribute materials or goods to participants at the event, or other opportunities that may be interpreted as agency endorsement of the goods or services of the donor over those of competing companies.

Benefits to donors can include:

- acknowledgment of the donation by Department officials verbally at the event and on event literature, signs, agency and event websites, and correspondence, including use of a special title, such as “sponsor,” “contributor,” etc.;
- tickets to the event in question, including a greater number of tickets based on level of sponsorship (such as gold, silver, bronze, etc.), if there are different levels of sponsorship; and
- preferential seating (such as at a table in the front), although not seating that specifically is intended to provide special access to senior Government officials.

5. **No Coercion** – Gifts must be voluntary, so there should not be multiple communications to the same prospective donor. Only one contact should be made in almost all circumstances.
6. **No Solicitation of Travel Gifts** – Funds and in-kind donations for the official travel of a Federal employee to attend a meeting or similar function *cannot* be requested or solicited. [See below for more guidance regarding travel gifts.]

TRAVEL GIFTS

Agencies can accept offers to pay for the travel expenses of agency employees, subject to certain limitations, as explained below.

Travel gifts may be in the form of funds or in-kind contributions (such as an airline ticket, hotel room, or meal). The same restrictions apply to travel gifts as to other types of gifts—they cannot be accepted from agency grantees, contractors, or licensees in most cases, or from a member of an industry sector the agency regulates, or from anyone with an interest in a controversial matter pending before the agency. Some additional rules also apply to travel gifts.

SPECIAL RULES FOR TRAVEL GIFTS

No Solicitation – Agencies cannot ask for funds or in-kind support for the travel of a Federal employee to attend a meeting or similar event, such as a conference.

No First-Class Air Transportation – Agencies cannot accept an in-kind gift of first class airline tickets for an employee’s travel (unless the employee is authorized under Federal Travel Regulations to travel first class, such as for medical reasons.)

REPORTING REQUIREMENTS

Gifts to an agency must be reported on a form [CD 210](#) – Record of Gift or Bequest.

Any payment of travel expenses from a non-Federal source to attend a meeting or similar function must also be reported on a form [OGE 1353](#)—Semiannual Report of Payments Accepted from a Non-Federal Source.

These forms are available on the webpage of the Ethics Law and Programs Division:
www.commerce.gov/ethics.

JOINT PROJECTS

Agencies may conduct events jointly with state and local governments and, in some circumstances, with private sector organizations. When an agency is conducting a joint event with an outside party, there must be a written Memorandum of Understanding (MOU) that details the roles of the parties.

All Commerce agencies may enter into Joint Project MOUs with state and local governments and non-profit organizations. Agencies also have individual authorities, which may also be available for joint events. Contact an attorney in the General Law Division (202-482-5384) for information on the application of individual agency Joint Project authority.

Under the Joint Project authority, an agency may enter into an agreement to work together with state or local government or a non-profit organization on a project.

Requirements for a Joint Project – If the Joint Project authority is used:

- the costs of the project must be shared *equitably*;
- the joint project partner must be a *non-profit organization* or *public organization* (such as a state or local government); and
- the parties must have a *mutual interest* in the project.

Equitable Allocation of Costs – A key concept (and requirement) of a joint project is that the costs of the project are shared in an equitable manner.

- “Equitable” does not necessarily mean “equal.” The agency will be required to justify that under the circumstances of a particular project with particular partners the cost share is equitable. This is usually done through an attached budget.

Mutual Benefit – The benefits of a particular relationship under the joint project authority must accrue to both the agency and its partner; it is not a gift to the agency, in which only the agency benefits, or a grant to the joint project partner, in which only the partner benefits.

Financial Assistance – Note that a joint project is not financial assistance. The greater the agency’s share of the costs of the project, the more it is likely to be financial assistance—and the more the joint project will be subject to scrutiny.

Additional guidance and model Joint Project MOUs and other model MOUs can be obtained from the General Law Division website at:

<http://www.commerce.gov/os/ogc/general-law-division>.

PRIVATE SECTOR EVENTS HELD COLLATERAL TO AN AGENCY EVENT

There are occasions in which an agency event would be enhanced by activities for which the agency lacks either funds or legal authority. In such situations, events may be held in conjunction with the agency event, but hosted by a private-sector entity (or state or local government). For example, it is not unusual for a private-sector entity to host a reception for persons attending a Government conference. Agency officials may coordinate arrangements with the hosts of the non-Government event if it would further an agency goal.

SUPPORT FOR COLLATERAL EVENTS

Agency officials may give support to a non-official event held to complement an official agency event if they determine that it would further a Government purpose. These non-Government events supportive of an agency event are referred to here as “collateral events.” This is not a legal term; it is used here to describe any event that is held separate from, but complementary to, an official Government event. It can be a reception held after a Government conference to which conference attendees are invited; an entertainment event, such as a concert, organized on the weekend following a Government-hosted summit; or a dinner held the day before an agency seminar for those speaking at the seminar. The key differences between official events and collateral events are that collateral events are not hosted or organized by the Government, are not part of the agenda or program of an agency conference or event, and are not subject to restrictions that apply to Federal events.

Agency Support – Ways for an agency to support a collateral event include:

- publicizing the collateral event by distributing information about it at the official conference, such as through handouts or announcements (but not by listing the collateral event as part of the conference agenda or program or other means that give the impression that the collateral event is part of the agency conference);
- providing input to the collateral event host on who to invite to its event, such as the list of persons attending the official conference (although it is important that protected nonpublic information not be provided to the host of a collateral event);
- coordinating with the host of a collateral event regarding the time and location to ensure no scheduling conflict or logistical problems with events being held as part of the official conference or other collateral events;
- providing suggestions on the type of event that might be particularly appropriate held in conjunction with the official program, such as a breakfast or reception; and
- agreeing to have a Government official speak at the private-sector event, if doing so would be consistent with the agency’s mission and would not indicate preferential treatment for the collateral event host; such an appearance problem is less likely if the host is an association rather than an individual company.

AGENCY OFFICIALS ATTENDING COLLATERAL EVENTS

Agency officials who attend collateral events would need to be sure that they are in compliance with ethics regulations regarding gifts, if the event includes food, beverages, or entertainment.

Ethics Rules regarding Attending Non-Government Events – Under ethics regulations, any Government official may attend a collateral event if:

- the employee is speaking at the event;
- the event is a meal while the employee is on travel and the agency has accepted the meal as a gift to the agency (in which case the employee's *per diem* is reduced) (see above for rules on travel gifts to an agency); or
- the employee reimburses the host for the fair market value of the event.

In addition, a *career employee* may attend a collateral event if:

- the value is \$20 or less,
- the event is considered “widely-attended” and the employee’s supervisor has approved the employee’s attendance as of benefit to the agency, or
- the event is taking place outside the United States and persons other than United States citizens will be present and the value is less than the *per diem* for the city.

A *political appointee* may attend also attend a collateral event described above as acceptable for career employee if the event:

- is not hosted by a lobbying organization (and the invitation did not come from a registered lobbyist) or
- is hosted by a media company or 501(c)(3) organization (or state university) (and the invitation did not come from a registered lobbyist).

Soliciting an Invitation – Agency officials cannot ask to be invited to an event, even if it would meet the above criteria. This is because ethics rules do not allow Department employees to solicit personal gifts from anyone with interests in matters before Commerce of if the invitation is related to their Government position.

Note that an alternative to agency support for a collateral event hosted by a private-sector entity is for the agency to ask an outside source to provide funds or in-kind donations for an activity that could be incorporated into the official event. This option is explained above in the section on Gifts and Contributions.

AGENCY SUPPORT FOR PRIVATE-SECTOR EVENTS

The Department can provide support to private-sector events (or events held by a state, local, foreign, or international government) to the extent authorized by statute and for which funds are available. The most common means for such support is for an agency to provide a speaker at a private-sector event.

TRAVEL GIFTS

When an agency provides a speaker to an event there are often travel expenses incurred; regulations place limits on circumstances under which an agency can accept payment of travel expenses offered by a non-Federal source.

Travel Payments for Employees Speaking at an Event – Agency officials cannot ask the non-Federal host of an event to pay the travel costs for agency employees invited to speak at the event; this is because travel payments cannot be solicited. However, if offered, travel gifts can be accepted (unless offered by an agency contractor, grantee, or licensee or member of a regulated industry), either as funds to pay for costs to be incurred, reimbursements for costs incurred, or in-kind gifts (an airline ticket, hotel room, use of a vehicle, meal, etc.). First-class transportation cannot be accepted (unless authorized under Federal Travel Regulations). (See above for information on travel gifts.)

Events at Which Employees are Speaking – An employee who is speaking at an event in an official capacity can accept waiver of registration fees and any food, beverages, meals, and entertainment that is offered at the event on the day he or she is speaking that is available to others attending the event. The waiver of registration fees and meals at the event are not considered personal gifts to the employee or gifts to the agency. Therefore, the employee need not obtain approval from a supervisor, as required for widely-attended events; restrictions in the Ethics Pledge on gifts to political appointees from lobbying organizations do not apply; and restriction on gifts to an agency do not apply. However, if an employee attends a multi-day conference on a day that he or she is not speaking, the agency must pay the full registration fee charged to attend the conference or may, if offered, accept waiver of the registration fee as a gift to the agency (if acceptable under agency gift regulations and policies as described above). Note that current Department policy does not allow acceptance of travel payments from a lobbying organization for the travel of a Presidential appointee in a Senate-confirmed position (PAS); therefore, if a conference is hosted by a lobbying organization, the agency must pay the registration fee for a PAS to attend a conference on a day the PAS is not speaking.

HONORARIA AND SPEAKING FEES

Current Department policy is that honoraria and speaking fees cannot be accepted in connection with giving an official speech or talk or otherwise engaging in an event in an official capacity. If funds are offered as a speaking fee or honorarium, the offer must be turned down. However, funds offered to pay for or reimburse travel expenses can be accepted (if the source of the gift does not present a problem as described above).

APPEARANCE CONCERNS REGARDING FAVORITISM OR ENDORSEMENT

Before agreeing to participate in any event, agency officials should consider whether participation will serve an agency purpose and whether there are likely to be appearances of impropriety. The latter may be present if the event is held by an individual company and those invited are limited to (or are primarily) customers or clients (or prospective customers or clients). Participation in such an event, particularly by a senior official, may create an appearance of endorsement of the company or its products or services or that the company has a special relationship with or access to agency officials. Participation in such an event may still be warranted based on the importance of disseminating information at the event or for other programmatic reasons, but the appearance issue must be considered. Discussion with an attorney in the Ethics Law and Programs Division (202-482-5384) is advised.

NO-COST CONTRACTS AND NON-APPROPRIATED FUNDS ARRANGEMENTS

NO-COST CONTRACTS

A “no-cost contract” is a formal arrangement between the government and a contractor under which the government cannot have any financial liability to the contractor and the contractor can have no expectation of payment from the government. This vehicle allows the government to retain control over the manner in which the contractor performs the services, require reporting at various stages of performance, and mandate approval of deliverables at certain milestones during performance.

Under a typical no-cost contract, the contractor provides a service but instead of receiving compensation from the agency, the contractor charges and retains fees assessed against third parties for its services. However, because an agency cannot do via contract what it cannot otherwise do on its own, an agency may not award a no-cost contract that authorizes the contractor to collect fees as reimbursement for an expense that the agency would not otherwise be able to collect a fee for itself. Given this, the use of no-cost contracts is limited to those agencies with fee authority.

The contract should be competed in accordance with the Federal Acquisition Regulation unless a sole-source justification relying on one of the Competition in Contracting Act exceptions to full and open competition is prepared. Certain revisions to or deviations from standard provisions and clauses may be appropriate. The Contract Law Division would provide further guidance on this option.

Questions can be directed to the Contract Attorney that services your agency or 202-482-5384.

FEDERAL ASSISTANCE

GRANTS AND COOPERATIVE AGREEMENTS

Grants and cooperative agreements are two common forms of federal assistance provided by the Department. A grant is a transfer of money, *property, services or anything of value* to a recipient when the principal purpose of the relationship is to accomplish a public purpose of support or stimulation authorized by federal law. A cooperative agreement exists when the awarding agency transfers money, property, services or something else of value to a recipient to carry out a public purpose of support or stimulation *and* the agency expects to have substantial involvement in carrying out the contemplated activity. For example, if an agency has authority to support an entity that is carrying out an activity such as hosting a conference, substantial involvement might include identifying agendas items, topics for discussion and panel members. (In contrast, an agency *may not* utilize a cooperative agreement to acquire assistance in order to organize or host a conference).

Requirements for a Grant or Cooperative Agreement – Although property, services or other things of value may be transferred by the granting agency to a recipient in addition to, or in lieu of, money under a grant or cooperative agreement relationship, these arrangements are subject to several limitations.

The Department cannot award a grant or cooperative agreement unless Congress provides authority through legislation and funding to support the authorized activity. In other words, specific statutory authorization must exist and any necessary funding must be available before federal assistance can be awarded. Also, as a general rule, grants and cooperative agreements are awarded pursuant to a competitive process that involves solicitation of applications, evaluation, and a merit-based selection process. There are limited exceptions that would allow for noncompetitive award (e.g. Only One Source Identified, Unusual and Compelling Urgency, Public Interest). Utilization of these exceptions, however, requires prior administrative approval by the grants officer and legal clearance.

Questions about whether statutory authority exists for an agency to award a grant or cooperative agreement may be directed to the Federal Assistance Law Division (FALD) at 202-482-8035.

OTHER RESOURCES-RELATED ISSUES

There are some other issues that may arise concerning use of resources or working with entities outside of the Department that are not addressed in this handout. Questions regarding the issues raised in this handout and other issues should be addressed to the appropriate legal office.

Department of Commerce Offices

(other than the United States Patent and Trademark Office)

- charging a fee in exchange for services provided
General Law Division – 202-482-5391
- charging a fee or costs for entrance into or participate on in an official event
General Law Division – 202-482-5391
- cost sharing arrangements between the Department and other Federal agencies
General Law Division – 202-482-5391
- contracting for goods or services with outside entities, including no-cost contracts
Contract Law Division – 202-482-1122
- providing grant funds or other financial assistance to non-Federal entities
Financial Assistance Law Division – 202-482-8035.

United States Patent and Trademark Office

- employees in USPTO should contact the USPTO Office of General Counsel for advice regarding these issues.

*Prepared by the Office of the Assistant General Counsel for Administration and Transactions,
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202-482-5384 – ethicsdivision@doc.gov – July 21, 2021*