

U.S. Department of Commerce

Agreements Handbook

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Introduction

The Department of Commerce (Department) has a variety of missions, such as promoting U.S. exports, developing innovative technologies, gathering and disseminating statistical data, measuring economic growth, granting patents and registering trademarks, promoting minority entrepreneurship, predicting the weather, and promoting economic growth. In furthering its programs, the Department may become involved with other Federal agencies, non-Federal organizations, and individuals having complementary missions or requiring the exchange of information or services with Department operating units in order to fulfill their own unique missions.

A. Purpose

This handbook will promote uniform implementation of interagency and other agreements throughout the Department, while giving due consideration to different individual program requirements and procedures.

This handbook is being issued as final guidance. It will provide general Departmental guidance to the operating units with respect to agreements.

B. Scope

This handbook assigns responsibilities and establishes general policies and procedures for the preparation, review, clearance, approval, monitoring, and close-out of an agreement. The handbook is for internal use by Department personnel and does not create any rights or liabilities with respect to the public or any third party.

This handbook applies to all Department operating units and the Office of the Secretary. Except as specifically excluded, this handbook covers all agreements, to include those not written and prepared by Department officials, that must be approved by a Department official.

This handbook provides guidance on determining the appropriate legal instrument for executing agreements, and it provides an overview of the most significant fiscal law principles related to agreements. Reference to this handbook, however, shall not be used as a substitute for legal review and clearance of agreements by the Office of the Assistant General Counsel for Administration (OGC/Admin) and operating unit programmatic counsel, as appropriate (see Chapter IV.D for a description of operating units' responsibility for obtaining legal review and clearance of agreements).

This handbook will use the term "agreement" to refer to the various types of inter-/intra- agency agreements or other agreements involving Department operating units. An agreement may be referred to as a: Memorandum of

Agreement, Memorandum of Understanding, Interagency agreement, Intra-Agency Agreement, or any other document that details the terms of an agreement and the parties' acceptance.

This handbook does not apply to contracts or financial assistance awards (grants, cooperative agreements, loans, or loan guarantees).

C. Policy

A formal relationship between the parties must be properly established prior to: (1) requesting goods or services from; (2) providing goods or performing services for; or (3) undertaking activities of a collaborative nature with any entity outside the operating unit. For those situations where a formal relationship must be documented in an agreement between the parties, an agreement must be developed and approved under the appropriate legal authorities with necessary reviews, coordination, and clearances. Coordination and reviews ensure that an agreement is in the proper format, reflects the appropriate authority for the specific agreement, is consistent with Department and operating unit policies and plans, and does not violate any laws.

No employee or representative of the Department shall use the policies or procedures contained in this handbook or the specific guidance promulgated by the operating units under the authority of this handbook to circumvent statutory and regulatory requirements relating to the award of contracts or financial assistance. Furthermore, no employee or representative of the Department shall use any agreement covered by this handbook as justification for the award of contracts or financial assistance on a noncompetitive basis.

Supplemental operating unit procedures are required by this handbook and shall, at a minimum, contain information as required in Chapter IV.C. The operating unit procedures will provide the details and specific instructions for an agreement approved by authorized officials of the operating unit. Clearance must be obtained from the Office of Acquisition Management (OAM) and OGC/Admin prior to the issuance and use of operating unit supplemental procedures. Once issued, a copy of the operating unit procedures must be provided in writing to OAM. In the event of a conflict between this handbook and the operating unit procedures, the provisions of this handbook will prevail.

I. Developing Agreements

Before developing an agreement an operating unit must consider the activities and nature of the transaction that it wants to accomplish, determine whether an agreement is the correct legal instrument, and understand the key fiscal law principles applicable to the contemplated arrangement.

A. Initial Considerations

Before drafting an agreement, you must first determine the activities in which you want to engage, the other party with whom you want to engage in those activities, whether engaging in those activities will require either or both parties to contribute in-kind resources to the accomplishment of those activities or to transfer funds to the other party, and whether your operating unit has sufficient resources (whether in terms of funds, staff, or management oversight) to fulfill its contemplated responsibilities.

Next, you must determine the correct legal instrument to effectuate the contemplated activities. To do this, you must carefully consider the principal purpose for which you wish to engage in those activities. Use the following chart to determine what instrument may be the best fit for the principal purpose that you want to achieve.

		Legal Instrument			
		Financial Assistance		Procurement Contract	Agreement
		Grant	Cooperative Agreement		
Principal Purpose	To transfer a thing of value to a non-Federal party to carry out a public purpose of support or stimulation authorized by law without substantial agency involvement	X			
	To transfer a thing of value to a non-Federal party to carry out a public purpose of support or stimulation authorized by law with substantial agency involvement		X		
	To acquire from a non-Federal party by purchase, lease, or barter, property or services for the direct benefit of the United States Government			X	

					Legal Instrument			
					Financial Assistance		Procurement Contract	Agreement
					Grant	Cooperative Agreement		
					To provide goods or services to or to engage in collaborative activities with another organization; to obtain goods or services from another Federal agency; or, to transfer of funds to a non-Federal entity as authorized by law for a purpose for which a procurement contract, grant, or cooperative agreement is not the more appropriate legal instrument			
					X			

If the activities you are contemplating require the use of a grant, cooperative agreement, or procurement contract, then you should work with your operating unit's Acquisition and Grants Office (or equivalent) to develop the appropriate instrument. This handbook does not address the requirements for those types of instruments, and the Department's Office of the Assistant General Counsel for Finance and Litigation's (OGC/F&L) advice should be sought on any legal questions regarding their use.

B. Constraints on Spending Funds through Agreements

This section will explain in general terms fiscal law principles that you should understand before preparing to draft an agreement. The nature of the work that may be done, the period of performance during which an agreement may be undertaken, and the amount of financial obligations an agency may incur are all affected by the following three concepts: purpose, time, and amount.

1. Funds Must be Available for the Agreement's Purpose

Appropriations may be used by Federal agencies only for the purposes specified by law, and, therefore, any transfer or expenditure of those funds must be for an activity that is consistent with a purpose for which those funds were appropriated by Congress. In order to ensure that the contemplated activities are consistent with the purpose for which the funds were appropriated, agreements must cite the relevant statutory authority for participating Federal agencies.

Absent statutory authority to the contrary, a Federal agency cannot have another organization undertake activities on its behalf that it would not have authority to do on its own (or vice versa).

Authority to undertake activities is often referred to as **“programmatically” authority** and it is the legal basis upon which the agency engages in its day-to-day mission.

In order to determine this authority, it is helpful to ask two questions: (1) what part of the agency’s mission will be accomplished by undertaking these activities, and (2) what statute or executive order requires or authorizes the agency to undertake that mission?

If you are unsure whether your operating unit possesses the requisite “programmatically” authority to undertake the activities you are contemplating, you should consult with your operating unit’s program counsel. If you are contemplating providing goods or services to or engaging in collaborative activities with another Federal agency, you should request that agency provide you with a citation to the authority that authorizes them to engage in the contemplated activities.

2. Funds May Only Be Available for a Limited Time

Statutes that appropriate funds to Federal agencies define the period of time during which those funds must be obligated, or in other words, the time during which an agency must enter into a legal commitment to disburse the funds. This is referred to as the funds’ “period of availability.” Appropriations are available for obligation for either a single fiscal year, multiple fiscal years, or until expended (referred to as “single-year,” “multi-year,” and “no-year” funds, respectively). Once an appropriation’s period of availability has lapsed, the appropriation is said to be “expired,” and it is no longer available to incur new obligations.

An appropriation may be obligated only to meet the legitimate, or *bona fide*, needs of an agency that arise during the appropriation’s period of availability. In other words, an agency generally may not obligate funds available only for the current fiscal year for needs that will not arise until a future fiscal year. Similarly, an agency generally may not use funds available only during the current fiscal year to satisfy obligations properly incurred in a prior fiscal year. To determine the appropriation to be charged for the provision of particular services, it is necessary to look carefully at the nature of the services to be provided.

Key Principle

An agency cannot do indirectly what it cannot do directly.

Therefore, a Department operating unit cannot transfer funds to another organization to undertake activities that the operating unit would not have authority to do on its own.

a. Severable and Non-Severable Services

A “**severable**” service is a service that is continuing or recurring in nature and can be separated into identifiable deliverables. A severable service is a *bona fide* need of the year in which the service is performed. For a severable service, the agreement’s period of performance generally cannot exceed the funds’ period of availability.

Example: Agency A enters into an agreement with Agency B to receive data on an ongoing basis. Agency A receives a benefit upon receipt of each portion of data. This service is severable. Therefore, the period of performance cannot exceed the period of availability of Agency A’s funds.

Exception	Agencies have statutory authority to procure by contract up to one year of severable services whose performance will extend beyond the end of the period of availability of the agency’s funds.
	THEREFORE:
	Funds may be transferred from one Federal agency to another pursuant to an agreement whereby the servicing agency will procure severable services by contract on the requesting agency’s behalf so long as the contract is executed before the end of the period of availability of the requesting agency’s funds.

A “**non-severable**” service is a service that, from the time it starts to the time it ends, is a single, indivisible undertaking for which an agency will receive no benefit from its performance until the entire undertaking has been completed. A non-severable service is a *bona fide* need of the year in which the service begins. If a services is non-severable, it may extend beyond the funds’ period of availability, but the entire cost of the service must be obligated up front. An agency cannot obligate funds to cover the partial cost of a non-severable service, a practice commonly referred to as “incremental funding.”

Example: An operating unit has a *bona fide* need for research services to be provided by another Federal agency. The operating unit will receive no benefit until the entire research effort is completed and it receives a final report describing the results of the research conducted. The total cost of the research project is \$1 million. The operating unit

cannot enter into an agreement whereby it obligates only \$500,000 of current year funds with the intention of obligating additional funds at a later date. Such an arrangement would constitute improper “incremental funding.” If an agency has a legitimate, *bona fide* need for a non-severable service, it must obligate currently available funds to cover the entire cost of that service up front.

If, however, an agency has a *bona fide* need for a service that can be broken into several parts, and it receives a discrete benefit from the performance of each of those parts, then the service is severable. The manner in which an agency can or must obligate funds to pay for such a service is dependent on the fiscal year availability of its appropriation. If an agency has single- or multi-year funds, it may only obligate funds to pay for those parts of the service that are a *bona fide* need of the years for which its appropriations are available. If an agency has no-year funds, then it may obligate funds for any or all parts of the service at its discretion, so long as it otherwise has a legitimate need for the service.

Example 1: An operating unit has a *bona fide* need for research services to be provided by another Federal agency. The research services consist of a large research project with five one-year components each of which will be completed sequentially. With each research component to be conducted, the operating unit will receive a report describing the results of the research, and each report will provide a discrete benefit to the operating unit. The operating unit has one-year funds. The operating unit, therefore, may only obligate funds to pay for the first component of the research.

Example 2: Assume the same facts as in Example 1, except the operating unit has two-year funds. The operating unit may obligate funds to pay for the first or the first and second components of the research, so long as it otherwise has a legitimate need for the service.

Example 3: Assume the same facts as in Example 1, except the operating unit has no-year funds. The operating unit may obligate funds to pay for any or all five components of the research, so long as it otherwise has a legitimate need for the service.

b. The Practical Impact of the Bona Fide Needs Rule on Agreement Planning & Drafting

Operating units must carefully consider the implications of the *bona fide* needs rule in drafting agreements involving the obligation of funds. In particular, operating units must determine the length of time required to complete the work and the time required to all necessary clearances. This is important to ensure that work to be done under the agreement can be completed consistent with the *bona fide* needs rule's requirements.

If, after the execution of an agreement that obligates funds, an operating unit determines that the work cannot be completed during the time provided by the agreement, it must fully consider the implications of extending the agreement's period of performance through an amendment to the agreement. An operating unit may not simply execute a so-called "no-cost time extension" without considering the impact of the *bona fide* needs rule.

Example: Agency A obligates current one-year funds to pay Agency B for Agency B personnel to perform severable services in the current fiscal year. The parties cannot enter into a no-cost time extension for Agency B personnel to continue the work beyond the end of current fiscal year.

3. Funds Must Be Sufficient in Amount

The Antideficiency Act is one of the key laws through which fiscal control of appropriated funds is maintained. Among other things, the Antideficiency Act prohibits agencies from obligating funds in excess of either current appropriations or an available apportionment of those appropriations. Accordingly, an operating unit must ensure, prior to executing an agreement that obligates funds, that it has sufficient funds currently available to meet that obligation.

Example: Absent specific statutory authority to the contrary, an operating unit cannot enter into an agreement pursuant to which it will indemnify the other party for any and all costs if a certain event happens. This constitutes an open-ended obligation, which means the operating unit's appropriation will not have enough funds to cover the obligation. Entering into such an agreement would constitute an Antideficiency Act violation.

The Antideficiency Act also prohibits agencies from obligating funds in advance of appropriations. So, if an operating unit has identified a *bona fide* need of the next fiscal year and it does not have funds currently

available whose period of availability extends into the next fiscal year, then the operating unit cannot execute an agreement obligating funds yet to be appropriated.

A common misconception is that when an agency has yet to be appropriated funds, the agency may still enter into an agreement in which it promises to reimburse another agency for the costs of performing a service “subject to the availability” of funds. An agency may enter into an agreement in which it promises to disburse funds, or in other words, obligate funds, only if it has funds available for obligation. Inserting the phrase “subject to the availability of funds” into an agreement that otherwise commits the agency to disburse funds does not negate the obligation, and an obligation of funds by an agency in advance of its appropriation is a violation of the Antideficiency Act.

Example: An operating unit has determined that it will provide transit benefits to its personnel next fiscal year through an agreement with another Federal agency. The operating unit only has current one-year funds. Therefore, the operating unit cannot obligate current year funds. It also cannot obligate funds yet to be appropriated simply by adding the phrase “subject to the availability of funds” to the agreement.

II. Authorities

An agreement is merely a legal instrument that documents the parties’ arrangement; it does not confer authority on an agency to undertake activities. At this point, you will have determined the activities in which you want to engage and that an agreement is the most appropriate legal instrument to document the activities. You will also have confirmed that your operating unit (and if the undertaking will involve another Federal agency, that it) has “programmatic” authority to undertake the contemplated activities.

In addition to the “programmatic” authority, whether the transaction involves the transfer of funds, the in-kind provision of services by one party for the benefit of the other, or the collaboration and in-kind contribution of resources of multiple parties on a single project, the transaction itself (and, hence, the agreement) must be authorized by law. Determining the principal purpose of your activity will guide you in identifying the appropriate authority for the contemplated agreement.

Model agreements for the most commonly used authorities can be found on OGC/Admin’s website: <http://www.commerce.gov/os/ogc/general-law-division>.

Because there are so many authorities for Department operating units to enter into agreements, only a few authorities are listed in this chapter.

A. Government-wide Authorities

This section includes information on authorities that may be used by all Federal agencies for the specific purposes and with the specific parties described in the respective statutes.

1. Economy Act, 31 U.S.C. § 1535

If the principal purpose of an agreement is to acquire from or provide goods or services to another Federal agency, instead of using a private sector contractor, the proper authority for the agreement is likely the Economy Act.

The Economy Act authorizes Federal agencies to purchase goods and services from other Federal agencies or major organizational units within the same agency when a more specific authority does not exist.

Key Points	<ul style="list-style-type: none"> • The other party must be a Federal Government agency • The purchasing agency has funding available • Payment must be made on the basis of actual costs of goods or services provided • A Determination and Finding (D&F) statement is executed by the purchasing party • Both parties should work together to determine if a more specific authority exists. If a more specific authority exists, then that authority should be used for the agreement and not the Economy Act.
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a. Statement of Determination and Finding

A contracting officer (or someone with delegated contracting authority) for the purchasing agency must sign and date an Economy Act D&F as required under 48 C.F.R. § 17.502-2. A D&F must be included in the agreement paperwork in all cases when an operating unit is purchasing goods/services. When an agency outside of the Department is requesting goods/services from a Department operating unit, operating units must make every effort to obtain D&Fs from the purchasing agency.

Key Points	An Economy Act D&F must include the following statements:
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	<ul style="list-style-type: none"> • The order is in the best interest of the United States Government. • The goods and services cannot be provided by contract as conveniently or cheaply by a commercial enterprise. • Whether the order will require contracting by the servicing agency. If contracting is required by the servicing agency, the D&F shall include the appropriate statement required under 48 C.F.R. § 17.502-2.
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b. Deobligation Requirement

In drafting Economy Act agreements, the funds must be deobligated by the requesting agency to the extent that the servicing agency has not itself properly incurred obligations related to the provision of goods to or the performance of services for a requesting agency before the end of the period of availability of the funds.

Prior to entering into an agreement with another Federal agency under the Economy Act, an operating unit must ensure that the servicing agency will either: properly obligate the funds on a contract before the end of their period of availability for services for which the requesting agency has a legitimate *bona fide* need; or, if work will be performed by the servicing agency in-house, then that work must be completed by the end of the period of availability of the funds (this is true regardless of whether the services could otherwise be characterized as non-severable). For a discussion of the *bona fide* needs rule and the distinction between severable and non-severable services, see Chapter I.B.2.

2. Intergovernmental Cooperation Act, 31 U.S.C. §§ 6501-6508

If the principal purpose is to provide services for a state or local government on a reimbursable basis, the proper authority for the agreement is likely the Intergovernmental Cooperation Act (ICA).

The ICA authorizes Federal agencies to provide States and local governments statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide.

Key Points	<p>The state or local government must:</p> <ul style="list-style-type: none"> • Make a written request for services to the agency • Pay the agency all identifiable costs • As required under OMB Circular A-97, certify that the services being requested pursuant to the agreement cannot be procured reasonably and expeditiously through ordinary business channels
Notes	<ul style="list-style-type: none"> • “State” means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State. • “Unit of general local government” means a county, city, town, village, or other general purpose political subdivision of a State. • The ICA is the authority for state and local governments to transfer funds to operating units for studies and reports. Therefore, the operating unit’s “programmatic” authority to do the work must also be included in the agreement.

B. Department-wide Authorities

This section includes information on authorities specific to the Department that may be used by any Department operating unit.

1. Special Studies Authority, 15 U.S.C. § 1525 (first paragraph)

If the principal purpose is to provide, upon request and payment of full costs, special studies on matters within the authority of the Department, the proper authority of the agreement is likely the Department’s Special Studies Authority.

The Department’s Special Studies Authority permits Department operating units to provide, upon the request of any person, firm, or public or private organization, (1) special studies on matters within the authority of the Department, including preparing from its records special compilations, lists, bulletins, or reports, and (2) transcripts or copies of its studies, compilations, and other records.

Key Points	<ul style="list-style-type: none"> • The outside organization must request the special study • The services and products can be provided only upon the payment of actual or estimated costs
Notes	<ul style="list-style-type: none"> • Payment for work or services performed under this authority must be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary • The special study must be conducted in order to meet the unique requirements of the public or private organization • The statute requires that the special study involve a matter within the authority of the Department. Therefore, the operating unit's "programmatic" authority to do the work must also be included in the agreement.

2. Joint Project Authority, 15 U.S.C. § 1525 (second paragraph)

If the principal purpose is to work collaboratively and to equitably share the cost of a project with a non-profit or public organization on a matter of mutual interest, the proper authority for the agreement is likely the Department's Joint Project Authority (JPA).

The JPA permits Department operating units to enter into projects with nonprofit, research or public organizations (such as state and local governments) if the project is of mutual interest to the parties and the costs of the project are apportioned equitably. Operating units cannot enter into JPA agreements with each other.

The purpose of the JPA differs significantly from authorities that permit the Department to enter into procurement contracts or to award financial assistance. Thus, while under some limited circumstances a transfer of funds may be authorized between the parties to a JPA agreement, caution must be taken to ensure that the JPA is not used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. An agreement that sets forth as the Department's main responsibility the transfer of funds to the other party is not a proper JPA agreement.

<p>Key Points</p>	<ul style="list-style-type: none"> • Can only be used with a non-profit, research, or public organization • Must concern a project of mutual interest • Costs must be equitably apportioned
<p>Notes</p>	<ul style="list-style-type: none"> • Additional Department policy requirements:¹ <ul style="list-style-type: none"> ○ The project cannot be done at all or as effectively without the participation of the other party; and ○ The project is essential to further a Department program • “Equitable” apportionment does not necessarily require a 50/50 split in costs. The agreement must adequately reflect the direct and in-kind contributions of each party. A budget, for example, could be used for this purpose. • The JPA is the authority for operating units to engage in collaborative activities with parties outside the Department. Therefore, the operating unit’s “programmatic” authority to do the work must also be included in the agreement.

C. Operating Unit and Other Agencies’ Authorities

In addition to Government- and Department-wide authorities, there are numerous authorities that specific operating units may use to enter into agreements. Operating units should contact OGC/Admin and appropriate program counsel to inquire about these authorities.

Other agencies may have their own statutory authorities to transfer funds to Department operating units or to engage in collaborative activities with Department operating units. Whether these authorities can be used for a particular agreement must be determined on a case-by-case basis in consultation with the other agency and OGC/Admin.

¹ For a further discussion of Departmental policy requirements applicable to JPA and other types of agreements, see Chapter 12 of the Department’s Accounting Principles and Standards Handbook, which is available at: <http://www.osec.doc.gov/ofm/Accounting/cover.html>.

III. Drafting an Agreement

This chapter describes general considerations for drafting an agreement with another party.

A. Working with the Other Party to Draft the Agreement

Both parties are responsible for drafting the agreement. While certainly one party or the other may take the lead on drafting the agreement, both parties should communicate and negotiate regarding the provisions of an agreement because, by definition, the parties must ultimately agree on the provisions that will be contained within it. The party taking the lead should share drafts of the agreement documents with the other to ensure the agreement includes all appropriate terms and clearly states the mutual intent of the parties.

Only one form should be used to document an agreement. If both parties have their own form agreement, operating units should discuss with the other organization which, if either, form agreement is appropriate or more convenient as the starting point for drafting the agreement. This handbook does not require a specific format for agreements but provides information necessary for each agreement. To assist with initial drafting, model agreement templates may be found at the General Law Division website, <http://www.commerce.gov/os/ogc/general-law-division>. Moreover, the Department of the Treasury has developed a recommended Government-wide standard interagency agreement template (with instructions), which is available at <http://www.fms.treas.gov/finstandard/reference.html>. See also Appendix A: Supplemental Information and Instructions for the Government-Wide Standard Interagency Agreement Form.

*Both Parties Should be Involved
in Drafting an Agreement*

Both parties are responsible for the content of an agreement, so whichever party takes the lead, it should share drafts of the agreement with the other party during the course of negotiations to ensure the draft includes all necessary provisions.

B. Required Agreement Provisions

KEY AGREEMENT ELEMENTS

Agreement Number	Parties and Scope	Responsibilities of the Parties	Authority
Estimated Costs and Accounting Information	Term of Agreement	Termination/ Cancellation Clause	Resolution of Disagreements
	Contact Information	Approving Official Signature	

An agreement's content depends upon financial circumstances, purpose, and authorities. The elements below are required for the majority of agreements. OGC/Admin should be consulted for questions regarding the content of a specific agreement.

1. **Agreement Number.** An agreement should have an identification number to enable efficient tracking.
2. **Parties and Scope.** An agreement should clearly name each party and describe the purpose and objective of the agreement.
3. **Responsibilities of the Parties.** An agreement must specify the role of each party (who is doing what and when) and provide a clear and comprehensive description of the work to be conducted. The division of responsibilities and commitments of each side should be defined as precisely as possible. Where applicable, the agreement should include goals, performance measures, deliverables, and a schedule of milestones. If an agreement is for the provision of goods or services, then the agreement should clearly specify what the deliverables are and when they are due.

*Responsibilities of the Parties:
Being Definite and Specific*

The key to having a sufficiently specific and definite agreement is to precisely define who is doing what and when.

Clearly state the goals to be accomplished and the deliverables to be produced.
4. **Authority.** An agreement must include citation(s) to the applicable authorities that permit the contemplated activities and/or the transfer

of funds. For additional discussion of authorities, see Chapters I.A and II.

5. **Estimated Costs and Accounting Information.** An agreement must specify the total estimated costs and, if appropriate, include a budget.

An agreement must also explain the method (e.g., through the Intra-governmental Payment and Collection (IPAC) System) and frequency (e.g., advance payment or monthly or quarterly reimbursement) with which payments will be made.

If an agreement is with another Federal agency, appropriate accounting information for both agencies must be included, such as each agency's Treasury Account Symbol (TAS), Business Partner Network (BPN) /Dun and Bradstreet Numbering System (DUNS) Number, Business Event Type Code (BETC), Agency Location Code (ALC) and Accounting Classification Code Structure (ACCS).

6. **Term of Agreement.** An agreement must include a specified start date and completion date. In most cases, no agreement shall extend beyond five years, and, in all cases, the parties should agree to appropriate interim review periods to ensure that the agreement's terms remain accurate and capture the continuing intent of the parties. Ideally, agreements should be reviewed by the partners annually. OGC/Admin should be consulted where there are exceptional circumstances necessitating agreements extending beyond five years.
7. **Termination/Cancellation Clause.** An agreement must include provisions to address termination and collection of termination costs.

Suggested Language: The agreement will terminate on [date], but may be amended at any time by mutual consent of the parties. Any party may terminate this agreement by providing [specify number] days written notice to the other party. If [name of requesting party] terminates the agreement, [name of servicing party] is authorized to collect costs incurred prior to its termination.

8. **Resolution of Disagreements.** Each agreement must include a method of settling disagreements.

Suggested Language: Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the areas(s) of disagreement shall be stated in writing by each party and presented to the other party

for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

If an agreement involves the transfer of funds between Federal agencies for goods or services, the agreement must explain that financial disputes shall be resolved consistent with the Treasury Department's Intragovernmental Business Rules.

9. **Contact Information.** An agreement should include each party's technical/programmatic and administrative/financial contacts.
10. **Signatories.** Include signature and date lines for the officials duly authorized to sign the agreement. An agreement is not effective, and, to the extent the agreement involves the obligation of Federal funds, funds are not obligated until the agreement is signed by all parties.

C. Optional Agreement Provisions

In addition to the items listed in section B of this chapter, an agreement may contain other applicable terms and conditions as agreed to by the parties. As not all items are appropriate for all situations, discretion and good judgment must be used when preparing an agreement. The following items may be considered for possible inclusion, as applicable to the agreement.

1. Statutory requirements, administrative regulations, policies, and procedures applicable to the work to be conducted under the agreement (e.g., travel or property management requirements, the Paperwork Reduction Act, or the Freedom of Information Act, etc.)
2. It is recommended that the following "audit access clause" be included in every agreement between the Department and non-governmental entities that transfers funds or other Department resources. However, program managers have the discretion not to include this language if, by doing so, the non-governmental entities would be reluctant to partner with the Department.

Suggested Language: Representatives of the Department of Commerce and its Office of Inspector General shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of any non-governmental party to this agreement that relate to the work conducted under this agreement.

D. Special Considerations

When agreements are developed without Department input and presented to the Department for review, there are many issues that could cause concern. The most common concerns are listed here. Please consult with OGC/Admin for assistance if these issues arise in an agreement you wish to pursue.

1. **Advisory Committees.** The Federal Advisory Committee Act (FACA) governs the organization and operation of “any committee, board, commission, council, conference, panel, task force or other similar group . . . which is . . . established or utilized by one or more agencies in the interest of obtaining advice or recommendations.” 5 U.S.C. App. 2, § 3. When an agreement calls for a group (comprised of at least one member who is not a Federal employee) to advise the Department, it can potentially trigger FACA if the group is being asked to provide “consensus” advice.
2. **Agreements with Foreign Governments.** Such agreements require a determination regarding whether they are international agreements under the Case-Zablocki Act, 1 U.S.C. § 112b. The Department’s process for making these determinations is delineated in Department Administrative Order (DAO) 218-4, “Treaties and Other International Agreements.”
3. **Indemnification Clauses.** An operating unit cannot agree to indemnify or “hold harmless” a project partner. Open-ended indemnification clauses are *per se* violations of the Antideficiency Act. If such language appears in a draft agreement, it should be deleted in its entirety. If the other party insists on language addressing liability, it may be replaced with the following:

The Government agrees to promptly consider and adjudicate any and all claims that may arise out of this Agreement resulting from the actions of the Government, duly authorized representatives, or contractors of the Government, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, the Federal Employees Compensation Act, 5 U.S.C. § 8101 *et seq.*, or such other Federal legal authority as may be pertinent.

However, a non-Government partner could agree to indemnify an operating unit.

4. **Information Disclosure.** The Freedom of Information Act (FOIA), 5 U.S.C. § 552, requires that the Government release any documentary materials requested by a non-Governmental party, unless the materials

are covered by one of the FOIA's exemptions. If a partner requires a provision concerning the protection or confidentiality of information, it should always be "to the extent permitted by Federal laws and regulations."

5. **Insurance Clauses.** The Government is self-insured. Therefore, any clauses requiring the Government to purchase insurance should be removed from the agreement.
6. **Intellectual Property.** If any works (such as written works, software, inventions) are created and/or used as a result of the agreement, or if any Web sites are created, domain names registered, names, logos or slogans created, the agency's rights to own or use the works must be provided for in the agreement.
7. **Paperwork Reduction Act.** The Paperwork Reduction Act (PRA), 44 U.S.C. § 3501, requires an agency to obtain approval from the Office of Management and Budget (OMB) before asking for answers to identical questions from ten or more people or entities. The PRA's requirements must be addressed before conducting such surveys.
8. **State Law and Choice of Venue.** The Government (and therefore, the agreement) cannot be subject to the laws of a State, and venue is only proper in a Federal court. Any clauses subjecting the Government (or the agreement) to State law and or the jurisdiction of a State court should be removed from the agreement.
9. **Use of the Department's Seal or Operating Unit Emblems/Logos.** If a partner wishes to use the Department's seal or operating unit emblems/logos, the use must be approved by the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), for the seal, and the head of the operating unit, for emblems/logos. OGC/Admin must concur with these approvals. See DAO 201-17 (for use of the Department's seal); DAO 201-1 (for use of emblems/logos).
10. **Use of an Outside Entity's Logo on a Department Publication.** As a policy matter, the Department prohibits the use of a logo of a private business or other non-Government organization anywhere on a Department publication. Publishing and Printing Management Manual, § 8.201, available at http://www.osec.doc.gov/oas/md/print_policy.htm. This provision may be waived by the CFO/ASA.

IV. Responsibilities and the Legal Clearance Process

A. Chief Financial Officer and Assistant Secretary for Administration

The Department's CFO/ASA is responsible for developing and implementing policies, standards, and procedures for the general administration of every agreement covered by this handbook.

B. Office of Acquisition Management

The Director, Office of Acquisition Management (OAM), is delegated the authority to develop, issue, and oversee implementation of policies and procedures for the administration of every agreement involving Department operating units covered by this handbook; including the following:

1. Coordinating a review of the Department's agreement policy and procedures with the operating units. Upon completion of such review, OAM will update this handbook as appropriate.
2. Providing guidance, interpretations, and technical assistance on Department-wide policies and procedures for the administration of agreements. OAM will coordinate with OGC and other offices as appropriate in fulfilling this function.
3. Notifying appropriate operating unit and departmental staff of changes and revisions to these policies and procedures.
4. Conducting or participating in reviews, task force groups, or other assessments to assure compliance with Department-wide policies and procedures established for the administration of agreements.
5. Working with OGC/Admin to prepare, issue, and maintain this handbook.
6. Coordinating with OGC/Admin to review and provide clearance for operating unit supplemental procedures prior to their issuance.

C. Internal Operating Unit Responsibilities

The head of the operating unit is responsible for assuring that all procedures set forth in this handbook are followed within the operating unit and that supplemental procedures are developed in accordance with this handbook (subject to advance review and clearance by OAM and OGC/Admin).

The operating unit may assign the functional responsibilities outlined below in any manner that works best for the operating unit. These responsibilities must be specifically included in the operating unit procedures.

1. Program Office Responsibilities

- i. Coordinate as necessary with each party to an agreement to identify the responsibilities of each party and the activities to be undertaken.
- ii. For agreements not prepared by the Department, review the agreement presented to the Department, negotiate as necessary, and ensure that the agreement follows the appropriate Department and legal requirements.
- iii. Ensure that the agreement is assigned an operating unit agreement identification number and that the number is displayed on agreements and amendments, as appropriate.
- iv. For agreements requiring the transfer of funds, coordinate with the servicing budget or finance office to confirm the availability of funds.
- v. Comply with the requirements of Commerce Acquisition Manual (CAM) Chapter 1317.570 when an interagency agreement is expected to result in an assisted acquisition.
- vi. Ensure that any agreement in which the Department is the requesting agency under the Economy Act has a D&F as required by 48 C.F.R. § 17.502-2. A copy of the D&F must accompany the agreement for legal review. If another agency is requesting services from the Department, obtain a copy of the requesting agency's D&F.
- vii. Ensure that each agreement is reviewed and/or cleared by the appropriate operating unit and Department officials and offices. The agreement should not be signed by any operating unit official until all reviews have been completed and clearances have been obtained.

When May Activities Commence?

*Activities should not commence until the agreement has been signed by **both** parties.*

In addition, funds should not be transferred nor should an obligation be recorded in your financial management system until the agreement has been fully signed.

- viii. Monitor performance and progress under the agreement to ensure that agreement activities are being performed as scheduled. Track all relevant costs, including labor costs (salaries and benefits), overhead costs, and any other identifiable costs associated with activities performed under an agreement.
- ix. Maintain a complete file for each agreement, including all documentation related to the agreement. Files should include information as required in Chapter VII.

2. Procurement Office Responsibilities

- i. Review and sign D&Fs for those agreements made under the authority of the Economy Act where the operating unit is the requesting agency.
- ii. Provide advice and guidance, as requested, to the program office in development of an adequate D&F.
- iii. Comply with the requirements of CAM Chapter 1317.570 when the interagency agreement is expected to result in an assisted acquisition.

3. Budget and Finance Office Responsibilities

- i. Assist the program office in developing agreement budgets as requested, and provide budget, financial, and accounting support and advice to the program office and others as needed.
- ii. Ensure that sufficient funds are available in the applicable appropriation and apportionment to enter into agreements that require the Department to transfer funds.
- iii. Identify any restrictions on the Federal funds, e.g., one-year/no-year funds, and provide notification(s) as appropriate.
- iv. If the operating unit is obligating funds, ensure that the obligation is properly recorded once the agreement (or amendment to obligate additional funds) has been signed by all parties.
- v. Ensure that all actual costs are recovered for any receivable agreement which specifies recovery of all actual costs.

- vi. Ensure that payments are made and received according to the conditions of the agreement.
- vii. Approve the receipt of reimbursements/advances from an ordering agency or entity.
- viii. Maintain financial records for all operating unit agreements, including payout, accounts receivable, and advance payments.

D. Departmental Legal Review and Clearance

Specific roles of various offices within OGC are as follows:

1. Office of the Assistant General Counsel for Administration

OGC/Admin is responsible for providing legal review and clearance of all agreements and amendments, including “no-cost time extensions,” unless otherwise advised by OGC/Admin. See Chapter VI.C.15.

2. Office of the Assistant General Counsel for Finance and Litigation

OGC/F&L is responsible for preliminary review and advice for interagency agreements through which a contract may result (see CAM Chapter 1317.570 for additional requirements).

3. Program Counsel

Legal review may also be required by other OGC offices. Operating units should provide for this in their operating unit instructions.

E. Tips for Expediting Legal Clearance

1. Send a complete agreement package. Agreements with missing information or pages cause clearance delays.
2. Consider adding a cover letter with a brief explanatory statement describing the project in layman’s terms.
3. Cite to proper authorities, including the authority for the transaction and “programmatic” authorities. Contact OGC/Admin or your program counsel for assistance regarding transaction and “programmatic” authority, respectively.
4. Fully identify within the agreement the responsibilities of each party and any deliverables.

5. Ensure that the period of performance for the activity is clearly stated, and if the term of the agreement is different than the activities' period of performance, that must also be clearly stated.
6. Include proper appropriation information (e.g., type of funds and period of availability) in the agreement. If the agreement is with another Federal agency and funds are being transferred for services, you must also include appropriate accounting data, which includes each party's: DUNS/BPN Number, TAS, and BETC.
7. Include a dispute resolution provision within the agreement.
8. Cut and paste carefully! When using boilerplate language from another agreement, make sure that it is applicable to the agreement currently being drafted.
9. Provide to OGC/Admin appropriate points of contact (with telephone numbers) who can address questions during the course of legal review.
10. Check for inconsistent statements and dates in the agreement.
11. Agreements should not be signed by Department officials until legal clearance is received. Generally, fully executed or retroactive agreements will not be cleared.
12. Expired agreements cannot be amended! The Department operating unit should instead draft a new agreement.
13. When an amendment is being forwarded for legal review, it should cite the termination date of the underlying agreement as well.
14. If you are forwarding an amendment for clearance, it is useful to reference the underlying agreement and prior amendments (if any) in an accompanying cover letter.
15. Use the checklists found in Appendix B: Checklists.

V. Detail Agreements

Detail agreements are a specialized form of an agreement that involves the detail of an employee from one organization to another. A detail agreement is substantially similar to any other agreement, but should include a few additional provisions as noted in this chapter.

A. What is a Detail?

A detail is a temporary move from an employee's position of record to a different position for a specified period of time. The employee is expected to return to his or her position of record at the end of the specified period. Under a detail, an employee performs duties other than those of the position the employee currently holds.

The following are actions that are not considered details:

- Assignments, which are when employees perform one or more of the regular duties of the position to which they are appointed, in a location away from their regular place of work.
- Assignments of employees to another executive department or approved organization to participate in a training program or developmental rotational assignment (e.g., Senior Executive Service Career Development Program, Presidential Management Fellows Program, and training assignments under other career or executive development programs).
- Assignments under the Intergovernmental Personnel Act (IPA) Mobility Program, which provides for the temporary assignment of personnel between the Federal Government and State and local governments, colleges and universities, Indian tribal governments, or other eligible organizations. 5 U.S.C. §§ 3371-3376; 5 C.F.R. Part 334.²

Details versus Assignments
 "Detail" -- Where an employee performs duties other than those of their current position

"Assignment" -- Where an employee performs one or more of their regular duties in a different location or undertakes training or developmental assignments

Whether a particular arrangement constitutes a detail or an assignment is a matter to be determined between the loaning agency and the loaning agency's servicing human resources (HR) office.

The manner in which assignments should or need to be documented is beyond the scope of this handbook, and operating units should consult with the Department's Office of Human Resources Management (OHRM) or their servicing HR office regarding the extent to which and how assignments may need to be documented.

² The Office of Personnel Management Optional Form (OF) 69, "Assignment Agreement – Title IV, Intergovernmental Personnel Act," can be used to document IPA agreements, and it is located at:
[http://contacts.gsa.gov/webforms.nsf/0/57F8BEEE3C393BC985256A720068950E/\\$file/of69_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/57F8BEEE3C393BC985256A720068950E/$file/of69_e.pdf).

B. Procedure for Details

All details of Department personnel to positions outside of the Department and all details of SES employees and political appointees must be approved by OHRM.³ For all other details, approval may be required by the operating unit's servicing HR office. Operating units are responsible for contacting their servicing HR office or OHRM to determine which HR office(s) must approve specific details, and if so, how to request their approval.

An agreement must be drafted for any detail arrangement that will result in the transfer of funds. An agreement must also be drafted for any detail of Department personnel to a position outside of the Department or of non-Department personnel to a position within the Department regardless of whether the detail arrangement is on a reimbursable or non-reimbursable basis.⁴ An agreement must be drafted for a non-reimbursable detail between Department operating units if required by OHRM or either operating unit's servicing HR office. If neither OHRM nor the servicing HR offices require an agreement for a non-reimbursable detail between operating units, the participating operating units are responsible for otherwise maintaining written documentation for undertaking the detail and the loaning operating units' approval of the detail. In particular, see Section E of this chapter for additional information regarding details between Department operating units. See Figure 1, below.

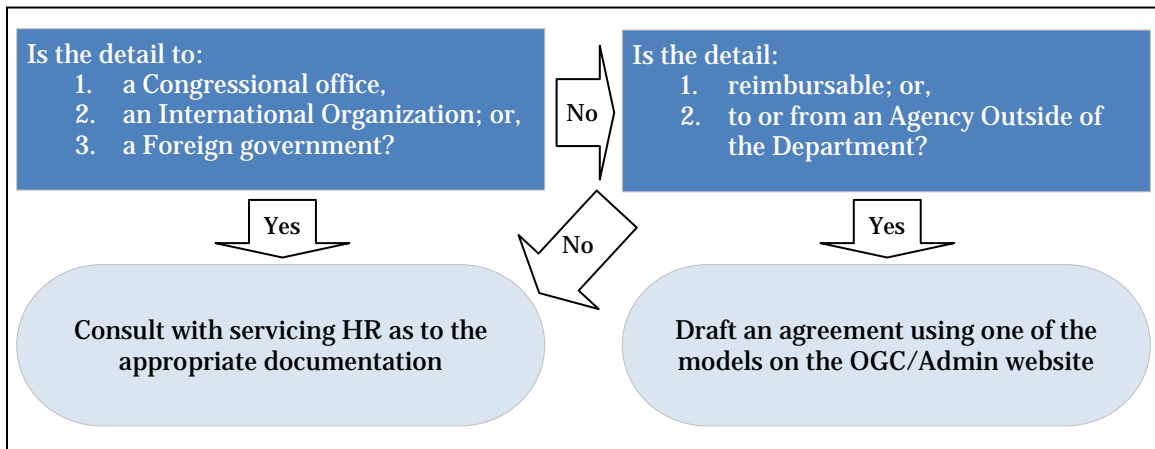


Figure 1. When to Draft a Detail Agreement

³ See Memorandum from Deborah A. Jefferson, Director for Human Resources Management, to Secretarial Officers and Heads of Operating Units, *Delegation of Human Resources Management Authority for Details*, November 28, 2003 (included in this Handbook as Appendix C: Detail Approval Policy).

⁴ However, where it is a non-reimbursable detail to a Congressional office, an international organization, or a foreign government, the operating unit's servicing HR office should be consulted regarding the best manner to document the arrangement.

Advance legal review by OGC/Admin is required for all detail agreements involving the transfer of funds. It is required for non-reimbursable detail agreements only if directed by OHRM or operating unit policy.

Detail agreements that require approval by the operating unit's servicing HR office and/or OHRM, should be forwarded to those offices who will then forward the agreement to OGC/Admin as appropriate. Otherwise, the operating unit should forward the agreement directly to OGC/Admin if it is a reimbursable detail agreement or if OGC/Admin review is required by OHRM or operating unit policy. As with all agreements, details cannot begin until they are reviewed and cleared by the appropriate operating unit and Department offices and have been signed by both parties. See Figure 2, below.

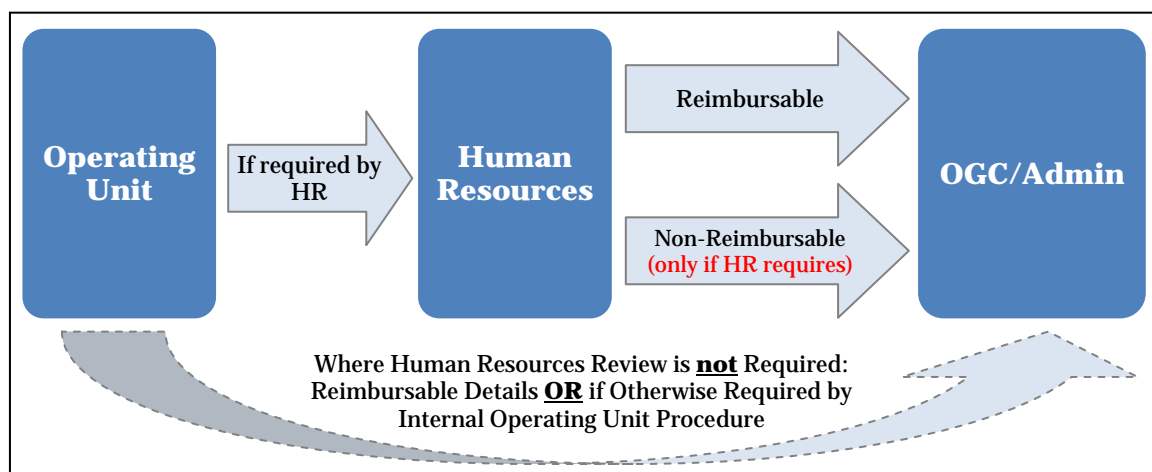


Figure 2. Review of Detail Agreements

DAO 202-334 (Details), Department-wide HR Bulletins, and any other OHRM or servicing HR office mandates provide additional guidance and procedures regarding the approval of details. This information should be reviewed and followed.

C. Agreement Content

Detail agreements should generally contain the same provisions as in any other agreement (see Chapter III) but should also have provisions regarding:

- The particular arrangement of the detail, including whether it will be undertaken on less than a full-time basis;
- The responsibilities for maintaining time and attendance;
- Obtaining input from the requesting agency for a detailee's performance evaluation; and
- The responsibilities of the parties for providing administrative support, office space and technical support during the term of the detail.

D. Authorities

There are several potential authorities for detail agreements. Some detail agreements provide for reimbursement of salary and benefits costs by the requesting party to the loaning party. Other detail agreements do not provide for reimbursement. In either case, there must be authority that permits the agreement to be so structured. Operating units and HR offices may contact OGC/Admin if they have questions about potential authorities for detail agreements.

Example 1: Operating units are authorized to detail or transfer employees to international organizations on a reimbursable or non-reimbursable basis. 5 U.S.C. § 3343 (details); 5 U.S.C. §§ 3581-3584 (transfers); 5 C.F.R. §§ 352.301-352.314. The Department of State provides a listing of approved international organizations to which operating units may detail or transfer personnel, which is located at: <http://www.state.gov/p/io/empl/126305.htm>.

Example 2: Operating units may detail employees to the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Domestic Policy Council, and the White House Office of Administration under 3 U.S.C. § 112. However, operating units must be reimbursed for any detail to an office covered by 3 U.S.C. § 112 that exceeds 180 calendar days in a given fiscal year. The statute does not apply to many of the offices within Executive Office of the President. Operating units and HR offices may contact OGC/Admin if they have questions about which offices fall within the scope of 3 U.S.C. § 112.

1. Reimbursable Details

The most commonly used authority for executing a reimbursable detail from one Federal agency to another is the Economy Act. Some Federal agencies have specific authority for reimbursable detail agreements. In that case, the specific authority should be used instead of the Economy Act. If the Economy Act is used as the authority for a detail agreement, all of the requirements of the Economy Act discussed in Chapter II.A.1 must be followed, including executing an Economy Act D&F.

Key Point

When using the Economy Act for detail agreements:

- The agency providing the detailee must be reimbursed for all actual costs, that is, be reimbursed for the detailee's salary, benefits, and other related costs during the detail.

2. Non-reimbursable Details

Unless an agency possesses specific statutory authority, non-reimbursable details from one Federal agency to another, including between operating units, are presumptively unlawful because appropriations are to be spent solely for the purposes for which they were appropriated. If specific statutory authority for a non-reimbursable detail exists and applies, it should be cited in the agreement. Otherwise, there are two recognized exceptions to the general rule against non-statutorily authorized non-reimbursable details under a Comptroller General opinion, 64 Comp. Gen. 370 (1985):

- Non-reimbursable details are permissible “where they involve a matter similar or related to matters ordinarily handled by the loaning agency and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided;” and
- Non-reimbursable details are permissible when the fiscal impact on the appropriation supporting the detail is *de minimis*.

An official in the detailee’s supervisory chain must make **ONE** of these determinations when relying upon the Comptroller General opinion. If the former determination is applicable to a detail arrangement, it **must** be used in favor of the latter determination. Regardless of which determination is made for a particular detail arrangement, the determination must be noted in the agreement, and the agreement must include language that explains **how** the determination is applicable to the particular detail. Where a formal agreement is not entered into for a non-reimbursable detail, an operating unit must still make and document one of these two determinations before detailing its personnel. See Section B of this Chapter for when detail agreements are necessary.

Notes	<ul style="list-style-type: none"> • Some Federal agencies have specific authority for non-reimbursable detail agreements. Such authority must be used instead of relying upon the Comptroller General opinion. • If the loaning agency determines that the detail involves a matter similar or related to matters ordinarily handled by the loaning agency, the loaning agency should specify the agency mission(s) that the detail supports and explain how the detailee will directly support those missions during the detail. • If the loaning agency determines that the detail’s
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	<p>impact on the appropriation supporting the detail is <i>de minimis</i>, the loaning agency must specify how the impact is, in fact, <i>de minimis</i>. If the individual is being detailed from a Department operating unit based on the <i>de minimis</i> impact determination, then every 120 days the operating unit must re-determine that the detail continues to have a <i>de minimis</i> impact on its appropriation.</p> <ul style="list-style-type: none"> • The fiscal impact of <i>de minimis</i> non-reimbursable details is cumulative in nature, and an operating unit must consider the total number of details it has made on this basis before undertaking others. • Details that are based on the <i>de minimis</i> impact determination cannot exceed one year total.
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E. Details between Department Operating Units

Under 5 U.S.C. § 3341, details from one Department operating unit to another may be undertaken in increments of 120 calendar days upon the written approval of the loaning operating unit. A detail may be for longer than 120 days so long as it is conditioned on the loaning operating unit making a written determination to continue the detail every 120 days. Written determinations can be made in any form approved by an operating unit's servicing HR office, including an email or memorandum to the file. An operating unit's servicing HR office may require a copy of the written determination(s).

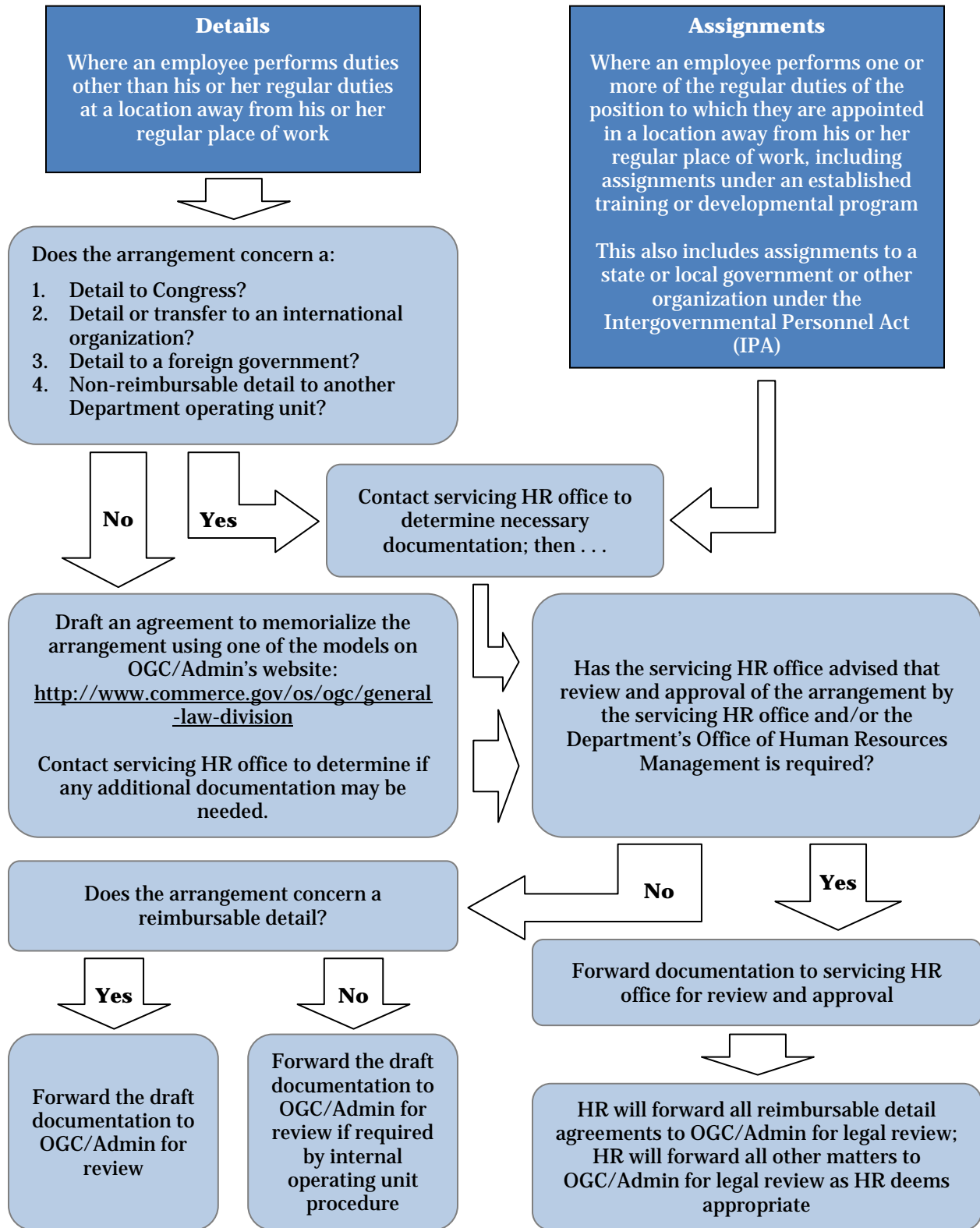
While section 3341 authorizes the personnel action of a detail between Department operating units, it neither authorizes the transfer of funds from one appropriation account to another to reimburse the cost of a detail nor authorizes one operating unit to detail its personnel on a non-reimbursable basis to another where they are each supported by separate appropriations. Refer to section D of this chapter for a discussion of authorities to detail on a reimbursable or non-reimbursable basis.

F. Details/Assignments Flowchart

The next page contains a flowchart for handling detail agreements and assignments.

Detail and Assignment Flowchart

Operating units must work with their servicing human resources (HR) office to determine if the contemplated arrangement is: (1) a detail; or (2) an assignment



VI. Frequently Asked Questions

The following questions have been asked by Department of Commerce employees regarding developing and implementing agreements. The answers may be useful in guiding all employees. Employees are also encouraged to contact the OGC/Admin General Law Division at (202) 482-5391 for further assistance.

A. Developing Agreements

1. Why are written agreements necessary?

Written agreements are necessary to memorialize relationships with other operating units, Federal agencies or non-Federal entities particularly when funds are being transferred or resources are being committed to a project. Further, they are needed to document collaborative efforts between the parties and serve as the basis for a Federal agency to record an obligation in their financial management system where that agency is transferring funds under the agreement.

2. Are agreements required in order to have a meeting with another Federal agency to discuss a potential project?

No. A formal agreement is not necessary to carry out routine tasks such as engaging in meetings or conference calls.

3. Do I need to involve an attorney during the initial process of developing of an agreement?

An attorney is not necessary, but if you are unsure whether “programmatically” authority exists for the activity being contemplated, you should contact your program counsel for assistance. If you have questions regarding how to draft your agreement or how to structure a transfer of funds, you should contact OGC/Admin for assistance.

4. What are severable services?

Severable services are services that are ongoing or repetitive in nature. These are services that generally have natural breaking points. Examples include ongoing accounting services, transit benefits, or research work where either the extent of the work is the provision of data on an ongoing basis or periodic reports for which the requesting agency receives a benefit.

5. What are non-severable services?

Non-severable services are services that constitute a single, indivisible undertaking for which the requesting agency receives no benefit until the

entire project is completed. An example includes a research project where the requesting agency does not receive anything of consequential value until the entire project is completed and it receives a final report.

6. Why is it important to know whether services being sought by the requesting agency are severable or non-severable?

This distinction between severable and non-severable services is important to know because this determination will define what funds may be obligated and for what time period.

7. Can an agency obligate current year funds to pay for services to meet a future fiscal year's needs?

No. In those instances where the requesting agency only has one-year funds available to it, the requesting agency generally cannot obligate funds for the next fiscal year's services, and, therefore, the agencies cannot mutually execute an agreement to provide for such services until funds for the next fiscal year have been appropriated to the requesting agency. If the requesting agency has multi-year funds, then those funds may be used to purchase services for any year within the funds' period of availability.

8. Can a requesting agency transfer one-year or multi-year funds to a servicing agency for a non-severable service that exceeds the period of availability of the funds when using an authority other than the Economy Act?

Yes. If the requesting agency has determined that it has a bona fide need for the service and that the service is non-severable in nature. If the requesting agency is paying the servicing agency to perform non-severable services, then its funds are available to pay the servicing agency's costs (including contractual costs) even though the work extends beyond the funds' period of availability. For non-severable services, the requesting agency must obligate funds to pay the entire cost of the service up front.

9. Can a requesting agency transfer one-year or multi-year funds to a servicing agency for a severable service and that exceeds the availability of the funds when using an authority other than the Economy Act?

Yes, if the requesting agency is paying the servicing agency to procure a severable services contract on its behalf, then the funds may be used even if the contract extends beyond the period of availability of the funds so long as the contract (excluding option years) is no longer than one calendar year.

No, if the requesting agency is paying the servicing agency to perform severable services and the work is being done in-house by the servicing agency, then funds are only available to pay for services to be completed by the end of the period of availability of the funds.

10. Is there a difference in how severable and non-severable services are treated when using the Economy Act?

No. Because of the Economy Act's deobligation requirement, whether the service is severable or non-severable, the funds must be obligated by the servicing agency by the end of the funds' period of availability or the requesting agency must deobligate the funds (if funds were advanced to the servicing agency, the funds must be returned).

This means that either all work must be completed by the end of the period of availability if the work is being done "in-house," or the funds must be properly obligated on a contract before the end of the funds' period of availability.

If all of the funds will be obligated by the servicing agency on a contract procured on behalf of the requesting agency, then there is no problem if the servicing agency executes a contract before the end of the period of availability of the funds and either:

- the contract is for non-severable services; or
- the services are severable and the contract (excluding option years) is no longer than one calendar year.

11. If an agreement includes the language, "subject to the availability of funds," would that allow operating units to sign the agreement even though the requesting agency does not yet have the funds available?

No. Under the Antideficiency Act (ADA), 31 U.S.C. §§ 1341-42, absent statutory authority to do otherwise, a Federal agency cannot incur obligations in excess or in advance of appropriations. Accordingly, one agency cannot enter into an interagency agreement with another for the provision of goods or services that obligates that agency to reimburse the other when it does not have currently available appropriations. Adding the phrase "subject to the availability of funds" to such an agreement does not prevent an ADA violation. Agencies cannot obligate funds in advance of receiving them or obligate more than they have.

12. If a Federal agency wants to enter into an umbrella agreement with another Federal agency that covers several years, can that be done without violating the ADA?

Yes. An agency can enter into an umbrella agreement that sets forth the terms and conditions but does not obligate any funds. Instead, the agreement would explain that funds for specific activities will be obligated via amendment. The amendment would be the affirmative action needed to obligate funds once those funds became available.

13. If I am using a one- or multi-year account to transfer funds under an agreement, isn't it true that "the law" makes the funds "available" for an additional five years after the end of the funds' period of availability?

No. The "law" being referred to here is the account closing statute (31 U.S.C. §§ 1551-58). It provides that once a one- or multi-year appropriation has expired, the appropriation account remains open for a period of five years only for recording, adjusting, and liquidating already incurred obligations properly chargeable to that appropriation account. After the passage of five years, the account is closed and any remaining balance is cancelled. The account closing statute does not extend the obligational life of fixed-year appropriations. It merely provides agencies with time to liquidate, adjust, or record obligations properly incurred during the appropriation's period of availability.

B. Authorities

1. For an Economy Act agreement, must a completed Determination and Finding (D&F) statement be included with the agreement at the time it is forwarded for legal review?

When the Department is the requesting agency, a D&F must be obtained. When the Department is the servicing agency, you should make every effort to obtain D&Fs from the requesting agency. If you are attempting to obtain a D&F from a servicing agency, you may forward agreements through the proper channels for legal review in anticipation of obtaining the D&F.

2. Do I need a separate D&F for each amendment that I make to an Economy Act Agreement?

Yes, unless the base agreement includes a D&F that covers the entire duration of the agreement, including amendments.

3. I am working with another Federal agency. What should I do if one agency suggests that the Economy Act should be used as the authority to transfer funds and the other agency suggests that there is a more specific authority?

Generally, the Economy Act should not be used if there is a more specific authority to transfer funds. Both parties should work together to determine if a more specific authority exists. If agreement cannot be reached, please contact OGC/Admin for assistance.

4. Is a Military Interdepartmental Purchase Request (MIPR) an agreement authority?

No. A MIPR is simply a form. Specifically, it is DD Form 448, MIPR, which can be accompanied by DD Form 448-2, Acceptance of MIPR. Generally, by means of a MIPR, Department of Defense components transfer funds to other Federal agencies. However, an agreement in the form of a MIPR must include all the same required provisions as an agreement in any other form.

5. I am drafting a Joint Project agreement; can you explain the additional Department policy requirements?

Yes. In accordance with Department's Accounting Principles and Standards Handbook, Joint Project agreements must explain why the project cannot be done at all or as effectively without the participation of the other party and that the project is essential to further a Department program.

6. Can any operating unit rely on the Department's Special Studies Authority?

Yes. The agreement must, however, set forth the operating unit's specific "programmatic" authority to do the work contemplated under the agreement. The Special Studies authority permits outside organizations to transfer funds to operating units; however, the study must involve a matter within the authority of the Department. The Special Studies authority is not programmatic authority. Operating units may only provide services upon payment of actual costs. This means that no products are to be delivered in advance of receiving payment.

7. A state agency has contacted our office to request technical assistance on a project. Can we work with them and receive payment for our services? The state is not able to pay in advance.

Yes. If you have “programmatic” authority to engage in the work requested. The Intergovernmental Cooperation Act permits reimbursement to Federal agencies for services rendered rather than solely on an advanced payment basis as required by the Special Studies authority.

C. Drafting an Agreement

1. What is the difference between an interagency agreement, memorandum of understanding, and memorandum of agreement?

While some agencies may use the terms to represent different types of transactions, there is no legal difference between the terms. They are all subject to the same legal requirements.

2. What elements must be present in all agreements that do not transfer funds?

The project title, names of the parties, purpose of the agreement, a “programmatic” authority for all Federal parties, the duration of the agreement, a termination provision, a dispute resolution provision, contacts for the parties, and signatories for the parties.

3. What elements must be present in all inter/intra-agency agreements that transfer funds?

The project title, names of the parties, purpose of the agreement, an authority to transfer funds, the amount being transferred, a programmatic authority for each agency, the duration of the agreement, a collection of costs upon cancellation clause, a termination clause, a dispute resolution provision, contacts for the parties, and signatories for the parties.

In addition, for agreements between Federal agencies include the following information for each agency: TAS, BETC, and DUNS Number.

4. What is the BETC?

The BETC is a code used in the Government-wide accounting system to indicate the type of activity being reported, such as payments, collections, borrowings, etc. This code must accompany the TAS. Generally, the BETC used for transactions within the scope of this handbook are: DISB (for

disbursement) for the requesting agency and COLL (for collections) for the servicing agency. For more information, please refer to http://www.fms.treas.gov/gwa/factsheet_betc.html.

5. What is the TAS and how do I find it?

A TAS, or Treasury Account Symbol, is the receipt, appropriation, expenditure and other fund account symbols and titles as assigned by the Department of the Treasury for Government-wide accounting purposes. You should work with your finance/budget office to obtain the proper TAS for your activity.

Generally, the TAS consists of three independent pieces of information. The first two numbers of a TAS code usually represents the agency. For the Department, the first two numbers are always 13. The second set of numbers can vary in length and indicate the length of time the funds are available. No-year funds are denoted by an "X." If the funds are one-year funds, the number will represent the fiscal year in which the funds were appropriated (e.g., 10 would indicate the funds were appropriated in fiscal year 2010). If the funds are multi-year funds, the code will generally include two numbers, often separated by a slash, indicating first the year the funds were appropriated then the year the funds expire. For example, three-year funds appropriated in fiscal year 2010 would appear as 10/12. The final set of numbers, usually four numbers in length, but sometimes longer, is the fund code, that is, the appropriation.

So, for example, the TAS for the Department's Departmental Management Salaries and Expenses one-year appropriation for fiscal year 2011 would look like: 13 11 0120. The TAS for NOAA's Operations, Research, and Facilities two-year appropriation for fiscal year 2011 would look like: 13 11/12 1450.

For more information, please refer to http://fms.treas.gov/gwa/factsheet_tas.html.

6. Do I have to use the Department's model agreements?

No. However, if you follow the Department's model agreements and checklists, your agreement will include the necessary provisions and meet the required elements of the specific agreement authority. If you are working with a party that insists on using its own model or form, you can do that as long as the model or form includes all of the necessary provisions and required elements.

7. How much detail should an agreement include regarding the activities being conducted?

The key to a well written agreement is to begin with a clear explanation of the activities that are being conducted. The language should simply explain the overall work involved and the roles and responsibilities of the parties involved. Often, a statement of work is referenced to set forth specific milestones, timeframes, and deliverables.

8. Why does an agreement need to clarify the activities as well as the start and end dates of the activities?

Accurate start dates and end dates are critical in order to make determinations as to whether the agreement complies with Federal appropriations law. When funds are being transferred, those specific funds must be associated with specific activities.

9. What is the difference between the period of availability of funds and an agreement's period of performance?

The period of availability of funds is the time period during which the funds remain available by law for an agency to incur obligations. The performance period is the window of time within which the work is to be performed as specified in the agreement.

10. Is there a difference between a period of performance and an agreement's termination date?

Yes. The performance period is the window of time within which the work is to be performed as specified in the agreement. The termination date is the date on which the agreement expires. However, in some agreements, these dates are the same, and in some agreements, the termination date is often referenced as the end date of the period of performance.

11. When should I execute an amendment to extend an agreement's termination date?

You should have the amendment approved and signed before the underlying agreement terminates. The amendment should clearly state the new termination date.

12. Can an expired agreement be amended?

No. If an agreement has expired, there is no live agreement to amend.

13. What information should be included in Amendments?

Refer to the Amendment Checklist in Appendix B: Checklists.

14. What is meant by the term “No-Cost Time Extension”?

A No-Cost Time Extension (NCTE) generally refers to extending the period of performance of an agreement without the need for additional funds to carry out the project. A NCTE may become necessary if the project was delayed for some reason. A NCTE cannot be used to pay for new work using funds obligated to pay for previously requested work.

15. When does an amendment extending an agreement’s period of performance without additional costs (commonly referred to as a “no-cost time extension”) require formal legal review by OGC/Admin?

Such an amendment requires clearance if:

- The underlying agreement was not cleared by OGC/Admin; or
- The extension goes beyond the period of availability of the funds obligated by the underlying agreement (if Federal funds were transferred); or
- The extension is for more than 6 months; or
- The extension is not the first extension; or
- The extension changes the scope of work set forth in the underlying agreement or provides for tasks that were not paid for from the original funds.

16. Can funds from an agreement that commenced in one fiscal year be “carried over” into the next fiscal year?

Maybe. Whether carrying funds into the next fiscal year is permissible depends on the authority being used to transfer the funds, the nature of the work, and the period of availability of the funds being transferred. If the agreement contemplated the continuance of activities beyond the funds’ period of availability, the legal permissibility of carrying over the funds beyond their availability would have been addressed by OGC/Admin during its review.

17. If the period of performance is extended for an agreement with a non-Federal partner, is the funding also extended?

If the parties mutually agree to extend the performance period via written amendment, the partner’s funds would remain available. Non-Federal

parties do not have a congressionally-defined period of availability by which they must be obligated.

18. Where can I find model agreement templates and checklists?

Visit the OGC/Admin General Law Division's website at http://www.ogc.doc.gov/gen_law.html.

19. What should I do if my agreement contemplates the other party making use of a Department emblem or logo or the Department seal?

If your agreement contemplates the use of logos, emblems, or the Department seal, please read Department Administrative Order (DAO) 201-1 (logos/emblems) or DAO 201-17 (seal). If an outside party would like to use a Departmental/Bureau logo/emblem or Department seal in conjunction with activities contemplated under the agreement, please contact OGC/Admin for assistance.

20. What if my agreement involves intellectual property issues such as use of trademark or copyright?

Contact the OGC/Admin for assistance. Depending upon the facts, the agreement may need to include references to relevant Departmental policies or additional Federal laws.

21. How much lead time should we allot for clearance by OGC/Admin?

A general rule of thumb is 30 days.

22. Will OGC/Admin provide training on agreements?

Yes. Please contact OGC/Admin General Law Division's Chief or Deputy Chief with any requests for training. Requesting offices should develop a proposed plan for when and where the training will be conducted and how the training will be administered, that is, in person, video-conferencing, etc. Requesting offices will be responsible for organizing the training, making any necessary conference-room reservations, and administering all technical aspects of approved training sessions.

VII. Record Keeping

A. Official Agreement File

The operating unit responsible for managing the agreement shall maintain an official file for each agreement. This file, regardless of location, must contain the documents and information listed below, as applicable.

1. A copy of the agreement and all amendments with signatures by all parties to the agreement. The operating unit file copy of each of these documents shall contain the agreement identification number.
2. A copy of all appropriate correspondence generated or received by the operating unit related to the agreement.
3. For agreements under the authority of the Economy Act where the operating unit has requested goods or services of another Federal agency, the official agreement file must contain the operating unit-executed D&F. For agreements where another Federal agency has requested goods or services from the operating unit, the file should include a copy of a D&F executed by the requesting agency.
4. A copy of all clearance documents obtained in developing and completing the agreement.
5. A copy of the budget or other basis for estimating funds to be obligated and/or resources committed by each party if applicable.
6. Financial information (e.g., billing, receivables, payables, etc.) if applicable.
7. Other pertinent material.

B. Retention

The official agreement file must be retained in accordance with the applicable operating unit-specific records retention schedule or the Government-wide general records schedule. To the extent you have questions about what materials constitute records and the length of time records must be maintained, you should consult with your operating unit's records management officer. A list of Department records management officers can be accessed at: http://home.commerce.gov/cio/Records_Management/Records_Management_Officers.html.

Appendix A: Supplemental Information and Instructions for the Government-Wide Standard Interagency Agreement Form

The Office of Management and Budget, Office of Federal Financial Management and the Department of the Treasury, Federal Management Service have worked together to develop a standard Interagency Agreement (IAA) form. The IAA form was developed to facilitate communications between Federal agencies and to require agencies to agree to terms before one agency begins performing work for another.

The IAA Instructions and fillable General Terms and Conditions (GT&C) Section and Order Requirements and Funding Information (Order) Section can be found on the following Treasury website: <http://www.fms.treas.gov/finstandard/reference.html>.

A. Basic Overview of the Form

1. **Reimbursable agreements.** The IAA form is used to document reimbursable agreements, whereby one Federal agency pays another Federal agency. This includes reimbursable agreements between two Department operating units. The IAA form refers to the parties as “Trading Partners.” The Federal agency transferring funds is referred to as the “Requesting Agency” and the Federal agency receiving funds is referred to as the “Servicing Agency.” The IAA is **not used** for agreements that do not involve the transfer of funds from one party to the other.
2. **Recommended.** The Department of the Treasury recommends that agencies use the standard IAA form for reimbursable agreements. However, at this time, use of the IAA form is not mandatory.
3. **One agreement.** Importantly, the parties must rely on only one form of agreement to document reimbursable arrangements. If one party wishes to use the IAA form and the other party wishes to use a different form or template to document the arrangement, the parties must determine which one they will use.
4. **Flexibility.** The IAA form provides flexibility in how the Trading Partners document reimbursable arrangements.

B. Components of the Form

The IAA form is comprised of two sections: the GT&C Section and Order Section. Each section is comprised of numbered blocks requiring specific information. The GT&C and Order Sections permit parties to add attachments. This allows the parties to include additional information necessary to establish a proper agreement when there is insufficient space within the IAA form.

The IAA form includes “Interagency Agreement (IAA) Instructions.” The IAA Instructions provide guidance on completing the GT&C and Order Sections. The IAA Instructions must be reviewed in order to properly complete the GT&C and Order Sections.

Key Principles of the Form	
<ul style="list-style-type: none"> • Each IAA must include a GT&C Section. An Order Section cannot be completed without first completing a GT&C Section. • The GT&C Section is the partnership section of the IAA form. It establishes the relationship between the trading partners. • The GT&C Section identifies general information about the agreement such as the agencies entering into the agreement, the authority permitting the agreement, the start and end date of agreement activities, the scope of the agreement, the terms and conditions, and other required provisions. • No fiscal obligations are created through the execution of the GT&C Section. • The Order Section identifies the specific Requesting Agency requirements for the delivery of goods and/or services by the Servicing Agency. • The Order Section obligates funds, and it may only be signed if funds are available for obligation. • Attachments may be added to include additional information in the GT&C and Order Sections. 	

C. Supplemental Instructions

The supplemental instructions below must be read in conjunction with the instructions attached to the standard IAA form.

If an attachment is used to supplement any block(s) within the GT&C or Order Sections, identify the attachment within the block(s). An attachment should include the GT&C or Order number and identify the applicable GT&C or Order block(s) to which it applies.

The following table provides additional guidance related to specific blocks within the GT&C and Order Sections:

Block	Field Name	Supplemental Instructions
#3	Assisted Acquisition Agreement	For assisted acquisition agreements, follow the requirements under the Commerce Acquisition Manual 1317.570, section 3, Assisted Acquisitions.

Block	Field Name	Supplemental Instructions
#5	Agreement Period	If the “Start Date” is unknown, type in “ when signed ” for the “Start Date,” which is interpreted as meaning the last date of signature between the two parties. Always include a specific “End Date,” which denotes the overall end date for agreement activities. The “End Date” should include the time period of anticipated Orders that will be entered into pursuant to the GT&C Section.
#6	Recurring Agreement	Check the box No. Operating units may enter into new GT&C Sections or Order Sections to existing GT&C Sections to continue similar activities.
#10	Statutory Authority	<p>The parties must check the appropriate boxes to denote the Requesting Agency’s authority to transfer funds and the Servicing Agency’s authority to receive funds. These authorities should be identical.</p> <p>The parties can use the “Fill in Statutory Authority Title and Citation” field to denote each party's “programmatic” authority. Type in “Programmatic” authority and then type in the authority citation.</p> <p>NOTE: These sections only allow for a limited number of characters. Therefore, authority citations and/or authority explanations may need to be abbreviated. Additional information may be added in an attachment.</p> <p>NOTE: If the Economy Act is the authority for the agreement, a Determination and Finding (D&F) must be attached.</p>
#26	Funding Modification Summary by Line	This block only applies to a “Modification” to an existing Order. If an existing Order is being modified, the “Line # ____” pertains to the equivalent “Line Number ____” found at the top-right-hand corner of block #28 of the Order being modified.

Block	Field Name	Supplemental Instructions
#27	Performance Period	<p>If the “Start Date” for the “New” Order or “Modification” to an existing Order is unknown, type in “when signed” for the “Start Date,” which is interpreted as meaning the last date of signature between the two parties. Always include a specific “End Date,” which identifies the end of the period of performance for which funds are being obligated for this Order.</p> <p>An Order Section cannot be used to extend the termination date of a GT&C Section. Therefore, the “End Date” in the Order Section cannot exceed the “End Date” in the GT&C Section.</p>
#28	Order Line/Funding Information	<p><i>Requesting Agency Funding Expiration Date</i> For “Requesting Agency Funding Expiration Date” type in the date that the funds will expire. For example, two-year funds that were appropriated in fiscal year 2011 will have an expiration date of 09-30-2012. For no-year funds, type in “no-year funds.”</p> <p><i>Requesting Agency Funding Cancellation Date</i> The cancellation date does not extend the expiration date of the funds or the Order’s “End Date.” For no-year funds, type in “no-year funds.”</p> <p><i>Type of Service Requirements</i> Each block #28 must indicate if the services being provided are “Severable” or “Non-severable” services. The Requesting Party must make this determination. Severable services are those services that are continuing or recurring in nature. Non-severable services entail a single, indivisible undertaking for which the Requesting Agency will receive no benefit from the Servicing Agency until the entire undertaking has been completed.</p>
#31	Attachments	<p>If the Economy Act is the authority cited in block #10 of the GT&C Section, a Determination and Finding (D&F) must be attached.</p>

Appendix B: Checklists

The checklists in this appendix are intended as a guide to ensure that an agreement contains all necessary provisions. They are not a substitute for legal review, and upon legal review, an agreement may need revisions to ensure that the activities contemplated by a draft agreement are consistent with legal requirements.

While these checklists identify particular provisions that must be included in agreements, the template agreements available on OGC/Admin's website provide suggested language for standard administrative provisions (e.g., dispute resolution clauses, early termination, and payment of early termination costs). OGC/Admin's website is http://www.ogc.doc.gov/gen_law.html.

Economy Act Agreement Checklist

31 U.S.C. § 1535

1. Does the agreement identify the parties to the agreement, and are they Federal agencies?
2. Does the agreement include a unique agreement number?
3. Have you ensured that there is not an authority more specific than the Economy Act available to the parties that would permit the contemplated transfer of funds?
4. Does the agreement cite the Economy Act as the authority to transfer funds?
5. Does the agreement cite the “programmatic” authorities permitting the parties to undertake the contemplated activities?
6. Does the agreement describe the terms and conditions under which the contemplated activities will be completed? In particular:

-
- a. Does the agreement include a clear and specific description of the tasks to be completed and deliverables to be provided for the total amount of funds to be transferred?
 - b. Does the agreement state the total estimated cost for which the requesting agency will obligate funds?
 - c. Does the agreement state that the servicing agency will be reimbursed for all actual costs in providing the contemplated service?
 - d. Does the agreement describe the method and frequency of payment?
-

7. Does the agreement include the following financial data elements?

- | | Requesting
Agency | Servicing
Agency | |
|----|--------------------------|--------------------------|--|
| a. | <input type="checkbox"/> | <input type="checkbox"/> | Treasury Account Symbol (TAS) |
| b. | <input type="checkbox"/> | <input type="checkbox"/> | Business Event Type Code (BETC) |
| c. | <input type="checkbox"/> | <input type="checkbox"/> | Business Partner Network (BPN) code/Duns and Bradstreet Numbering System (DUNS) Number |
-

Economy Act Agreement Checklist
31 U.S.C. § 1535

8. Does the agreement include a termination date?
9. Is the agreement's period of performance within the period of availability of the funds to be obligated by the other agency? (If not, consult with OGC/Admin).
10. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
11. Does the agreement contain a provision regarding the payment of early termination costs?
12. Does the agreement contain a dispute resolution provision that provides for resolution of funding and other disputes?
13. Does the agreement provide the names and contact information for both administrative/financial and technical/program contacts for each party?
14. Does the agreement contain signature lines for each party?
15. Has the requesting agency accurately completed a Statement of Determination and Finding that has been executed by a contracting officer or other designated official?
-

Intergovernmental Cooperation Act Agreement Checklist

31 U.S.C. § 6505

1. Does the agreement identify the parties to the agreement, and is the party entering into the agreement with your operating unit a state or local government organization?
2. Does the agreement include a unique agreement number?
3. Does the agreement cite the Intergovernmental Cooperation Act as the authority for your operating unit to retain reimbursement for the services it will provide pursuant to this agreement?
4. Does the agreement cite the “programmatically” authority by which the operating unit is authorized to undertake the contemplated activity?
5. Is the contemplated service of a type similar to what the operating unit would provide for its own use?
6. Is the contemplated service of a type authorized to be provided by Federal agencies as listed in OMB Circular A-97, § 6? (Available at http://www.whitehouse.gov/omb/circulars_default/).
7. Does the agreement describe the terms and conditions under which the contemplated activities will be completed? In particular:

 - a. Does the agreement include a clear and specific description of the tasks to be completed and deliverables to be provided by the operating unit for the total amount of funds to be transferred?
 - b. Does the agreement state the total estimated cost to the operating unit for which it will receive reimbursement?
 - c. Will the operating unit be reimbursed for all actual costs in providing the contemplated service?
 - d. Does the agreement describe the method and frequency of payment?
 - e. Does the agreement include a provision stating that performance by the Department operating unit is subject to the continued availability of funds?

8. Does the agreement include a termination date?
9. In accordance with OMB Circulars A-97 and A-76, does the agreement include a provision stating that the state or local government organization certifies that the contemplated services cannot be procured reasonably and

Intergovernmental Cooperation Act Agreement Checklist
31 U.S.C. § 6505

expeditiously by it through ordinary business channels?

10. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
 11. Does the agreement contain a provision regarding the payment of early termination costs?
 12. Does the agreement contain a dispute resolution provision?
 13. Does the agreement provide the names and contact information for both administrative/financial and technical/program contacts for each party?
 14. Does the agreement contain signature lines for each party?
-

Special Studies Authority Agreement Checklist

15 U.S.C. § 1525 (first paragraph)

1. Does the agreement identify the parties to the agreement?
2. Does the agreement include a unique agreement number?
3. Does the agreement cite the Special Studies Authority as the authority for your operating unit to retain reimbursement for the services it will provide pursuant to this agreement?
4. Does the agreement cite the “programmatic” authority by which the operating unit is authorized to undertake the contemplated activity?
5. If the other party to the agreement is a Federal agency, does the agreement cite the “programmatic” authorities permitting the other agency to undertake the contemplated activity?
6. Does the agreement describe the terms and conditions under which the contemplated activities will be completed? In particular:

 - a. Does the agreement include a clear and specific description of the tasks to be completed and deliverables to be provided for the total amount of funds to be transferred?
 - b. Does the agreement state that the operating unit will receive payment for all of its actual costs in advance of providing the deliverables specified in the agreement?
 - c. Does the agreement state the total estimated cost for which the operating unit will receive payment?
 - d. If the agreement is with a non-Federal partner, does the agreement include a provision stating that performance by the Department operating unit is subject to the continued availability of funds?

7. If the agreement is with another Federal agency, does the agreement include the following financial data elements?

	Requesting Agency	DOC Operating Unit	
a.	<input type="checkbox"/>	<input type="checkbox"/>	Treasury Account Symbol (TAS)
b.	<input type="checkbox"/>	<input type="checkbox"/>	Business Event Type Code (BETC)

Special Studies Authority Agreement Checklist

15 U.S.C. § 1525 (first paragraph)

c. **Business Partner Network (BPN) code/Duns
and Bradstreet Numbering System (DUNS)
Number**

8. Does the agreement include a termination date?
9. If the agreement is with another Federal agency, is the agreement's period of performance within the period of availability of the funds to be obligated by the other agency? (If not, consult with OGC/Admin).
10. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
11. Does the agreement contain a provision regarding the payment of early termination costs?
12. Does the agreement contain a dispute resolution provision that provides for resolution of funding and other disputes?
13. Does the agreement provide the names and contact information for both administrative/financial and technical/program contacts for each party?
14. Does the agreement contain signature lines for each party?
-

Joint Project Authority Agreement Checklist

15 U.S.C. § 1525 (second paragraph)

1. Does the agreement identify the parties to the agreement, and is the party entering into the agreement with your operating unit a non-profit organization, research organization, or public organization or agency?
2. Does the agreement include a unique agreement number?
3. Does the agreement cite the Joint Project Authority?
4. Does the agreement cite the “programmatically” authorities permitting your operating unit to undertake the contemplated project?
5. If the other party to the agreement is a Federal agency, does the agreement cite the “programmatically” authorities permitting the other agency to undertake the contemplated project?
6. Does the agreement clearly describe a joint project between the parties?
7. Does the agreement describe how the contemplated project is of mutual interest to the parties?
8. Does the agreement describe how the contemplated project is necessary and essential to furthering the mission of the Department/your operating unit?
9. Does the agreement describe how the contemplated project cannot be completed at all or as effectively without the participation of the other party?
10. Does the agreement describe the terms and conditions under which the contemplated activities will be completed? In particular:

 - a. Does the agreement include a clear and specific description of the tasks to be completed?
 - b. Does the agreement explain (such as in a budget) the costs each party will incur towards completion of the project and how those costs are equitably apportioned between the parties?
 - c. If the agreement is with a non-Federal partner, does the agreement include a provision stating that performance by the Department operating unit is subject to the continued availability of funds?

11. Does the agreement include a termination date?

Joint Project Authority Agreement Checklist
15 U.S.C. § 1525 (second paragraph)

12. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
13. Does the agreement provide the names and contact information for both administrative/financial and technical/program contacts for each party?
14. Does the agreement contain signature lines for each party?
-

Non-reimbursable Detail Agreement Checklist

1. Have you consulted with your servicing human resources office to determine whether the contemplated arrangement is a detail and is not an assignment?
2. Does the agreement identify the parties to the agreement?
3. Does the agreement include a unique agreement number?
4. Does the agreement cite all applicable legal authorities? In particular:

 - a. Does the agreement cite the statutory authority for undertaking the detail on a non-reimbursable basis?
If there is no applicable statutory authority, has the loaning agency made ONE of the following determinations (not both): (1) That the detail will involve matters similar or related to matters ordinarily handled by the loaning agency, and the detail will aid a purpose for which receives appropriations (this determination must be used if applicable); or (2) that the detail will have a *de minimis* impact on its appropriations? Does the agreement cite 64 Comp. Gen. 370, 380-81 (1985) and state which of these two determinations apply and how?
 - b. In addition to a. or b., if the detail is between two Department operating units, does the agreement cite 5 U.S.C. § 3341?

5. Does the agreement describe the terms and conditions under which the detail will occur? In particular:

 - a. Does the agreement state the beginning and termination dates of the detail?
If the detail is between two Department operating units, does the agreement either: (1) terminate within 120 days, or (2) provide that the detail is subject to the loaning agency making a written determination to continue it every 120 days?
 - b. Does the agreement state how the time and attendance of the detailee, including leave usage, will be maintained and to whom in the loaning agency it will be reported?

Non-reimbursable Detail Agreement Checklist

- d. Does the agreement state that the requesting agency will provide a written evaluation of the employee's performance during the detail upon request by the loaning agency?
- e. Does the agreement state which agency will be responsible for providing the detailee technical and operational support, as well as office space and administrative support, during the term of the detail?
-

6. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
7. Does the agreement contain a dispute resolution provision?
8. Does the agreement provide the names and contact information for each party?
9. Does the agreement contain signature lines for each party?
-

Reimbursable Detail Agreement Checklist

1. Have you consulted with your servicing human resources office to determine whether the contemplated arrangement is a detail and is not an assignment?

2. Does the agreement identify the parties to the agreement?

3. Does the agreement include a unique agreement number?

5. Does the agreement cite all applicable legal authorities? In particular:

 - a. Does the agreement cite the statutory basis for transferring funds?
 - b. In addition to a., if the detail is between two Department operating units, does the agreement cite 5 U.S.C. § 3341?

6. Does the agreement describe the terms and conditions under which the detail will occur? In particular:

 - a. Does the agreement state the beginning and termination dates of the detail?
 - b. Does the agreement state the total estimated cost for which the requesting agency will obligate funds?
 - c. Will the loaning agency be reimbursed for all actual costs in providing the contemplated service?
 - d. Does the agreement describe the method and frequency of payment?
 - e. If the detail is between two Department operating units, does the agreement either: (1) terminate within 120 days, or (2) provide that the detail is subject to the loaning agency making a written determination to continue it every 120 days?
 - f. Does the agreement state how the time and attendance of the detailee, including leave usage, will be maintained and to whom in the loaning agency it will be reported?
 - g. Does the agreement state that the requesting agency will provide a written evaluation of the employee's performance during the detail upon request by the loaning agency?

Reimbursable Detail Agreement Checklist

- h. Does the agreement state which agency will be responsible for providing the detailee technical and operational support, as well as office space and administrative support, during the term of the detail?

7. Does the agreement include the following financial data elements?

	Requesting Agency	Loaning Agency	
a.	<input type="checkbox"/>	<input type="checkbox"/>	Treasury Account Symbol (TAS)
b.	<input type="checkbox"/>	<input type="checkbox"/>	Business Event Type Code (BETC)
c.	<input type="checkbox"/>	<input type="checkbox"/>	Business Partner Network (BPN) code/Duns and Bradstreet Numbering System (DUNS) Number

8. Is the agreement's period of performance within the period of availability of the funds to be obligated by the other agency?
9. Does the agreement include a provision permitting either party to unilaterally cancel/terminate the agreement with advance written notice?
10. Does the agreement contain a provision regarding the payment of early termination costs?
11. Does the agreement contain a dispute resolution provision that provides for resolution of funding and other disputes?
12. Does the agreement provide the names and contact information for both administrative/financial and technical/program contacts for each party?
13. Does the agreement contain signature lines for each party?
14. If the transfer of funds will be pursuant to the Economy Act, has the requesting agency accurately completed a Statement of Determination and Finding that has been executed by a contracting officer or other designated official?

Agreement Amendment Checklist

1. Can the amendment be drafted, cleared through both agencies' review processes, and executed by both parties before the underlying agreement expires? (If not, the parties should draft a new agreement instead).
2. Does the amendment identify itself as an amendment and specifically reference the underlying agreement that is being amended?
3. Does the amendment clearly state the work to be undertaken/deliverables and the timeframe in which that work will be done, if applicable, or does it otherwise clearly state its purpose?
4. If the amendment involves the transfer of funds, does it clearly state the total funds being obligated?
5. If the amendment is to an agreement with another Federal agency, and the amendment involves the transfer of funds, does the amendment include the following financial data elements to the extent that they differ from that contained in the underlying agreement?


Requesting
Agency

Servicing
Agency

- | | | | |
|----|--------------------------|--------------------------|--|
| a. | <input type="checkbox"/> | <input type="checkbox"/> | Treasury Account Symbol (TAS) |
| b. | <input type="checkbox"/> | <input type="checkbox"/> | Business Event Type Code (BETC) |
| c. | <input type="checkbox"/> | <input type="checkbox"/> | Business Partner Network (BPN) code/Duns and Bradstreet Numbering System (DUNS) Number |

6. Has the underlying agreement been reviewed to determine whether any information within it is out-of-date or whether any substantive provisions should be amended, and if so, does the amendment correct these provisions?
7. Does the amendment include a provision at the end that states, "All other terms of the underlying agreement remain unchanged?"
8. Does the amendment contain signature lines for each party?

Appendix C: Detail Approval Policy

MW 28 2003		UNITED STATES DEPARTMENT OF COMMERCE Chief Financial Officer Assistant Secretary for Administration Washington, D.C. 20230
MEMORANDUM FOR	Secretarial Officers Heads of Operating Units	
FROM:	Deborah A. Jefferson <i>Deborah A. Jefferson</i> Director for Human Resources Management	
SUBJECT:	Delegation of Human Resources Management Authority for Details	
<p>Effective immediately, all reimbursable and non-reimbursable details (regardless of the length) to organizations outside the Department and for certain categories of employees, must be approved by this office. This includes:</p>		
<ul style="list-style-type: none"> • Details to the Congress, the White House, the Office of Management and Budget and related offices, and other Federal agencies; and • Any detail, internal or external to the Department, affecting political appointees, i.e., Presidential Appointees requiring Senate confirmation, Noncareer Senior Executives, and Schedule C personnel. 		
<p>In a memorandum to Secretarial Officers and Heads of Operating Units, dated January 9, 1995, managers were delegated the authority to approve details to or from other agencies except those to the Congress, the White House, the Office of Management and Budget and related Offices; non-reimbursable details in excess of one year; and any detail affecting executive and political appointees, i.e., presidential appointees requiring Senate confirmation, Noncareer Senior Executives, and Schedule C personnel. This memorandum rescinds that portion of the delegation which allowed bureaus to approve reimbursable details of any duration to organizations outside the Department of Commerce. In early October 2003, I issued a rescission of the 1995 delegation which allowed bureaus to approve non-reimbursable details to other agencies for periods of less than one year.</p>		
<p>These changes are necessary to ensure that all employees on details can be properly accounted for, and that appropriate Department officials are aware when Commerce employees are detailed to positions in other agencies.</p>		
<p>Please refer any questions regarding the above to me at (202) 482-4807.</p>		
<p>cc: Principal and Servicing Human Resources Managers</p>		

Appendix D: Useful Resources

Department of Commerce Resources

Office of the Assistant General Counsel for Administration, General Law Division

Agreement Templates

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

Office of Acquisition Management

Commerce Acquisition Manual (CAM)

http://oam.eas.commerce.gov/CAPPS_cam.html

CAM Chapter 1317.570, *Interagency Acquisitions*

<http://oam.eas.commerce.gov/docs/Rev%20CAM%201317%20570%20Interagency%20Acquisitions%20-%20April%202010.pdf>

Office of Financial Management

Accounting Principles and Standards Handbook

<http://www.osec.doc.gov/ofm/Accounting/cover.html>

Cash Management Policies and Procedures Handbook

<http://www.osec.doc.gov/ofm/cash/cover.htm>

Executive Branch Resources

Office of Management and Budget

Guidance for Improving the Management and Use of Interagency Acquisitions

http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf

Department of the Treasury

Treasury Financial Manual

<http://www.fms.treas.gov/TFM/vol1/index.html>

Executive Branch Resources

Draft Standard Interagency Agreement⁵

<http://www.fms.treas.gov/finstandard/reference.html>

Federal Account Symbols and Titles (“The FAST Book”)

<http://www.fms.treas.gov/fastbook/>

Treasury Account Symbol Fact Sheet

http://fms.treas.gov/gwa/factsheet_tas.html

Business Event Type Code Fact Sheet

http://www.fms.treas.gov/gwa/factsheet_betc.html

⁵ This Government-wide standard interagency agreement template is recommended by Treasury in the Treasury Financial Manual (Bulletin 2011-04) for use with reimbursable agreements between Federal agencies; however, its use is not presently required.

Appendix E: Glossary

Term	Definition
<p>Agreement</p>	<p>As used by this handbook, an agreement refers to a written arrangement, other than a procurement contract or financial assistance, between a Departmental operating unit and a person or organization that involves the transfer of funds or the commitment of resources towards the accomplishment of particular activities authorized by law. The term “agreement” is synonymous with the terms “memorandum of agreement” or “memorandum of understanding,” which are often shortened to the acronyms MOA or MOU.</p> <p>Agreements are not authority unto themselves to undertake activities or to transfer funds. Rather, agreements are legal instruments through which the parties define the terms by which they will engage in the activities contemplated.</p>
<p>Apportionment</p>	<p>As defined by the Government Accountability Office’s <u>A Glossary of Terms Used in the Federal Budget Process</u>, an apportionment is the division of amounts made available by law for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination thereof.</p> <p>The Antideficiency Act requires that appropriations be apportioned to prevent obligations or expenditures at a rate that would cause the appropriation account to run out of funds. The Antideficiency Act prohibits agencies from obligating or expending funds in excess of such apportionments.</p>
<p>Appropriation</p>	<p>As defined by the Government Accountability Office’s <u>A Glossary of Terms Used in the Federal Budget Process</u>, an appropriation is the authority to incur obligations and to make payments from the Treasury for specified purposes.</p>
<p>Assignment</p>	<p>The assignment of an employee to perform one or more of the regular duties of the position to which the employee is appointed, in a location away from the employee’s regular place of work or the assignment of an employee to participate in a training course or developmental assignment directly related to the duties of the employee’s current official position.</p>

Term	Definition
<p>Assisted Interagency Acquisition</p>	<p>As defined by the Office of Management and Budget in its June 2008 <i>Guidance for Improving the Management and Use of Interagency Acquisitions</i>, an assisted interagency acquisition is where servicing and requesting agencies enter into an agreement pursuant to which the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding a contract, task order, or delivery order.</p> <p>Assisted interagency acquisitions include neither reimbursable work performed by Federal employees (other than acquisition assistance), nor interagency activities where contracting is incidental to the purpose of the transaction.</p> <p><i>See also</i> Direct Interagency Acquisition.</p>
<p>Augmentation of Appropriations</p>	<p>An agency's appropriations are augmented when an agency receives funds from a source other than a direct Congressional appropriation, including funds received from other agencies or non-Governmental organizations pursuant to an agreement. An agency's appropriations are also augmented when it is the beneficiary of services undertaken by another party on a non-reimbursable or partially non-reimbursable basis. Agencies are not permitted to augment the appropriations provided them by the Congress unless they have statutory authority to do so. For a discussion of authorities that may permit an agency's appropriations to be augmented under particular circumstances, see Chapter II.</p>
<p>Authority</p>	<p>Authority is a general term that refers to the legal basis upon which a certain set of actions may be taken. As discussed throughout this handbook, before undertaking activities with another organization pursuant to an agreement, the involved Department operating unit must ensure that authority exists to undertake the particular activities contemplated by an agreement, and, to the extent applicable, that authority exists to engage in the particular transaction at issue (such as an authority to transfer funds, an authority to accept or provide services on a non-reimbursable or partially non-reimbursable basis, or an authority to engage in collaborative activities). For additional discussion about authority, see Chapters I.B.1 and II.</p>

Term	Definition
	<p>Generally, authority that will be cited in agreements entered into by Department operating units will be statutes (cited either by references to the United States Statutes at Large or to the United States Code) and executive orders.</p>
	<p>For purposes of this handbook, the terms law, public law, statute, and statutory authority are synonymous.</p>
<i>Bona Fide Needs Rule</i>	<p>The <i>bona fide</i> needs rule provides that an agency may use its appropriated funds only to meet the agency's needs during the funds' period of availability.</p>
Contract	<p>A contract is a legal instrument, as defined by 31 U.S.C. § 6303, reflecting a relationship between a Departmental operating unit and a non-Federal entity where the principal purpose of the relationship is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government. Contracts are beyond the scope of this handbook.</p>
Cooperative Agreement	<p>A cooperative agreement is a legal instrument, as defined by 31 U.S.C. § 6305, reflecting a relationship between a Departmental operating unit and a non-Federal entity where the principal purpose of the relationship is to provide financial assistance to the recipient and substantial involvement is anticipated between the operating unit and the non-Federal entity during the performance of the contemplated activity. Cooperative agreements are beyond the scope of this handbook.</p>
Detail	<p>Where an employee, without an official personnel action to change their position assignment of record, performs duties other than those of the position the employee holds under his or her current appointment.</p>

Term	Definition
Direct Interagency Acquisition	<p>As defined by the Office of Management and Budget in its June 2008 <i>Guidance for Improving the Management and Use of Interagency Acquisitions</i>, a direct interagency acquisition is where a requesting agency places an order directly against a servicing agency's indefinite delivery vehicle (e.g., task or delivery order procurement contracts). The servicing agency manages the indefinite delivery vehicle, but does not participate in the placement of an order.</p> <p><i>See also Assisted Interagency Acquisition.</i></p>
Dun and Bradstreet Universal Numbering System (DUNS)/Business Partner Network (BPN) Number	<p>A DUNS or BPN Number is a unique set of numbers assigned to individual business locations of Federal buyer and seller agencies to ensure standardized Government-wide reporting and accounting for intra-Governmental transactions.</p>
Financial Assistance	<p>Financial assistance refers to the transfer of money, property, services, or anything of value to a recipient in order to accomplish a public purpose of support or stimulation that is authorized by Federal law. Forms of financial assistance include grants and cooperative agreements. Financial assistance instruments are beyond the scope of this handbook.</p>
Grant	<p>A grant is a legal instrument, as defined by 31 U.S.C. § 6304, reflecting a relationship between a Departmental operating unit and a non-Federal entity where the principal purpose of the relationship is to provide financial assistance to the recipient and no substantial involvement is anticipated between the operating unit and the non-Federal entity during the performance of the contemplated activity. Grants are beyond the scope of this handbook.</p>
Incremental Funding	<p>Incremental funding, in the strictest sense, refers to the practice of obligating funds to cover the partial cost of a non-severable service. As discussed in Chapter I.B.2, this practice is generally improper.</p>

Term	Definition
Indemnification	Indemnification is the act of insuring another party against a loss. An open-ended indemnification by an agency of another party, or in other words, a commitment by the agency to pay for any and all losses suffered by another party, is a <i>per se</i> violation of the Antideficiency Act.
In-Kind Contribution	An in-kind contribution is a contribution towards the completion of activities contemplated by an agreement other than a monetary contribution (e.g., the provision of services or use of property on a non-reimbursable basis).
Inter- / Intra-agency Agreement	<i>See Agreement.</i>
Loaning Agency	Loaning agency refers to the Federal agency that is detailing an individual to another organization. For a general discussion of details, see Chapter V. <i>See also</i> Servicing Agency.
Memorandum of Agreement / Understanding	<i>See Agreement.</i>
Non-Federal Organization	A non-Federal entity is any person or organization other than an agency of the United States. This includes individuals, private-sector businesses and organizations, state and local governments, educational institutions, international organizations, and international governments.
Non-Severable Services	Non-severable services are those services that constitute a single, indivisible undertaking for which an agency will receive no benefit from its performance until the entire undertaking has been completed. This term is used in the context of applying the <i>bona fide</i> needs rule, which is discussed in Chapter I.B.2.
Obligation of Federal Funds	An obligation of Federal funds refers to any action by which the Government creates a legal liability or definite commitment to disburse those funds.
Operating Unit	An operating unit is an organizational entity as defined by Department Organization Order 1-1, § 3.c.

Term	Definition
Ordering Agency	<i>See</i> Requesting Agency.
Other Special Agreement	<i>See</i> Agreement.
“Programmatic” Authority	“Programmatic” authority is a colloquial term used to refer to the authority of an agency to undertake activities towards the accomplishment of its mission. Such authority generally includes statutes establishing the agency or its programs and executive orders defining Presidential directives an agency is expected to perform. For a general discussion of “programmatic” authority, see Chapter I.B.1. <i>See also</i> Authority.
Providing Agency	<i>See</i> Servicing Agency.
Requesting Agency	Requesting agency refers to the Federal agency that is requesting or ordering goods or services from another Federal agency.
Servicing Agency	Servicing agency refers to the Federal agency that is providing goods or services to another Federal agency.
Severable Services	Severable services are those services that are continuing or recurring in nature. This term is used in the context of applying the <i>bona fide</i> needs rule, which is discussed in Chapter I.B.2.
Signatory	A signatory is an operating unit official who has or has been delegated authority to execute an agreement and, if applicable, obligate Federal funds on behalf of the operating unit.
Statement of Determination and Finding	The Federal Acquisition Regulation, 41 C.F.R. § 17.502-2, requires that every Economy Act order be accompanied by a Statement of Determination and Finding stating that the order is in the best interest of the Government, that the requested supplies or services cannot be obtained more conveniently or economically through a private source, and if the servicing agency must undertake a contracting agency to provide the goods or services, the circumstances that apply to the contracting action. The statement must be signed by a contracting officer or another official designated by the head of the requesting agency.

Appendix F: Acronyms Used in this Handbook

Acronym	Definition
BETC	Business Event Type Code
BPN	Business Partner Network
CAM	Commerce Acquisition Manual
CFO/ASA	Chief Financial Officer and Assistant Secretary for Administration
D&F	Statement of Determination and Finding
DAO	Department Administrative Order
DUNS	Dun and Bradstreet Universal Numbering System
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
IAA	Interagency Agreement
ICA	Intergovernmental Cooperation Act
IPA	Intergovernmental Personnel Act
JPA	Joint Project Authority
MOA/MOU	Memorandum of Agreement / Understanding
OAM	Office of Acquisition Management
OGC	Office of the General Counsel
OGC/Admin	Office of the Assistant General Counsel for Administration
OGC/F&L	Office of the Assistant General Counsel for Finance & Litigation
OMB	Office of Management and Budget
TAS	Treasury Account Symbol