



CONFERENCES

A Guide for Ethics Officials

Version 1.0

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CONFERENCES

A Guide for Ethics Counselors

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

This Guide does not, and cannot, answer every question that can arise in connection with conferences. Consequently, the Guide itself is not authoritative. The purpose of the Guide is to help the ethics practitioner identify issues both within and outside their expertise. Providing insightful analysis of ethics issues is essential, but failing to recognize that a contract attorney or an appropriations expert needs to be consulted could be catastrophic to the agency.

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

Finally, this is version 1.0 – Conferences: A Guide for Ethics Counselors. OGE hopes that by launching this initiative, agencies will contribute to its refinement and development. If you have comments, or suggestions, or wish to add your agency's perspective, please do so at www.contactoge.gov.

CONFERENCES

| | |
|--|----|
| Chapter 1: Introduction | 5 |
| 1.0 Is the Event a “Conference”?..... | 5 |
| 1.1 How Do You Determine Whose Conference It Is? | 6 |
| Chapter 2: Conferences Co-Sponsored with Non-Federal Entities | 8 |
| 2.0 Introduction: What is Co-Sponsorship?..... | 8 |
| 2.1 Organizing a Conference Co-Sponsored with a Non-Federal Entity | 9 |
| 2.1.1 Use of a contract..... | 10 |
| 2.1.1.1 Contract under the Federal Acquisition Regulation | 10 |
| 2.1.1.2 No-cost contract..... | 10 |
| 2.1.2 Use of a memorandum of understanding | 10 |
| 2.1.3 Use of a cooperative agreement | 10 |
| 2.1.4 Use of a partnership | 12 |
| 2.2 Permissible Actions in Seeking Qualified Co-Sponsors..... | 12 |
| 2.2.1 General | 12 |
| 2.2.2 Appearance of coercion..... | 12 |
| 2.2.3 Appearance of favoritism..... | 12 |
| 2.3 Potential Co-Sponsors..... | 13 |
| 2.3.1 Contributor of funds or logistical support | 13 |
| 2.3.2 Contributor with lack of substantive interest | 14 |
| 2.3.3 Co-sponsor created for event | 14 |
| 2.3.4 Prohibited sources | 14 |
| 2.3.5 Specific agency restrictions..... | 15 |
| 2.4 Publicity/Promotion | 16 |
| 2.4.1 Endorsement concerns | 16 |
| 2.4.2 Reserved—Promotional items | 16 |
| 2.5 Registration Fees..... | 16 |
| 2.5.1 When the agency may collect and retain the fee..... | 16 |
| 2.5.2 When the non-Federal entity may collect and retain the fee..... | 16 |
| 2.5.2.1 Reserved | 16 |
| 2.5.2.2 Free attendance by Federal agency employees | 16 |
| 2.5.3 Specific agency guidance | 17 |
| 2.6 Travel Expenses for Non-Federal Attendees | 17 |
| 2.7 Providing Meals, Snacks, and Refreshments..... | 19 |

May 2010

| | | |
|--|--|-----------|
| 2.7.1 | Federal employees at their official duty station | 19 |
| 2.7.2 | Reserved—Federal employees away from their official duty station | 21 |
| 2.7.3 | Non-Federal attendees..... | 21 |
| 2.8 | Reserved..... | 22 |
| 2.9 | Fundraising | 22 |
| 2.9.1 | Reserved..... | 22 |
| 2.9.2 | Reserved..... | 22 |
| 2.10 | Reserved..... | 22 |
| 2.11 | Promotional Items | 22 |
| 2.11.1 | Provided to Federal attendees by the non-Federal entity co-sponsor | 22 |
| 2.11.2 | Provided to Federal attendees by exhibitors | 23 |
| 2.11.3 | Provided to Federal attendees and non-Federal attendees by the agency | 23 |
| 2.11.3.1 | Using appropriated funds | 23 |
| 2.11.3.2 | Solicitation..... | 24 |
| 2.12 | Reserved..... | 25 |
| 2.13 | Specific Agency Guidance..... | 25 |
| 2.13.1 | General Services Administration | 25 |
| 2.13.2 | Department of Health and Human Services..... | 25 |
| 2.13.3 | Environmental Protection Agency | 25 |
| 2.13.4 | U.S. Air Force | 25 |
| Chapter 3: Non-Federal Entity Conferences | | 27 |
| 3.0 | Introduction..... | 27 |
| 3.1 | Federal Agency Speakers..... | 27 |
| 3.1.1 | Official Participation | 27 |
| 3.1.1.1 | When the Federal employee holds a position with the non-Federal entity | 27 |
| 3.1.1.2 | When the Federal employee is an active participant in the non-Federal entity.... | 27 |
| 3.1.2 | Unofficial participation | 27 |
| 3.1.3 | Reserved..... | 28 |
| 3.1.4 | Reserved..... | 28 |
| 3.2 | Free Attendance for Federal Employees..... | 28 |
| 3.2.1 | General guidance..... | 28 |
| 3.2.2 | Specific agency guidance | 28 |
| 3.3 | Reserved..... | 28 |
| 3.4 | Reserved..... | 28 |

| | | |
|---|---|-----------|
| 3.5 | Reserved..... | 28 |
| 3.6 | Reserved—Prizes Won at a Drawing at a Conference | 29 |
| 3.7 | Miscellaneous Restrictions on Federal Logistical Support..... | 29 |
| 3.8 | Specific Agency Guidance..... | 29 |
| Chapter 4: Federal Agency Conferences..... | | 31 |
| 4.0 | Introduction..... | 31 |
| 4.1 | Organizing a Government-Hosted Conference..... | 31 |
| 4.1.1 | Use of a contract to fund/organize a Government-hosted conference | 31 |
| 4.1.1.1 | Contract under the Federal Acquisition Regulation | 31 |
| 4.1.1.2 | No-cost contract..... | 31 |
| 4.1.2 | Reserved—Use of a memorandum of understanding | 33 |
| 4.1.3 | Use of a cooperative agreement and Government-hosted conferences | 33 |
| 4.2 | Co-Located Conferences and Events | 33 |
| 4.2.1 | Leave and attendance | 34 |
| 4.2.2 | Wear of the military uniform at a co-located event | 36 |
| 4.3 | Reserved..... | 36 |
| 4.4 | Reserved..... | 36 |
| 4.5 | Registration Fees..... | 36 |
| 4.5.1 | When the agency may collect and retain the fee..... | 36 |
| 4.5.2 | When the non-Federal entity may collect and retain the fee..... | 36 |
| 4.5.3 | Specific agency guidance | 37 |
| 4.6 | Travel Expenses for Non-Federal Attendees | 38 |
| 4.7 | Providing Meals, Snacks, and Refreshments..... | 38 |
| 4.7.1 | Federal employees at their official duty station | 38 |
| 4.7.2 | Reserved—Federal employees away from their official duty station | 39 |
| 4.7.3 | Reserved—Non-Federal attendees | 39 |
| 4.7.4 | Reserved—Ceremonies..... | 39 |
| Resources..... | | 40 |

CONFERENCES

Chapter 1: Introduction

1.0 Is the Event a “Conference”?

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

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

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

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

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

The **Government Employees Training Act (GETA)**, 5 U.S.C. §§ 4101-4118, allows an agency to collect and retain a fee to offset costs associated with training the employees of another agency. The term “**training**” as used in 5 U.S.C. § 4101 refers to “making available to an employee . . .

¹ GAO held that, notwithstanding the general prohibition against serving food to employees within their official duty station, an agency holding an internal meeting off-site may pay under limited circumstances a facility rental fee that includes the cost of food provided to agency employees. The payment was not improper because the fee was all-inclusive, not negotiable, and competitively priced to those venues that did not include food.

a planned, prepared, and coordinated program . . . of instruction or education, in scientific, professional . . . fields which will improve individual and organizational performance goals.” Some conferences will qualify as training. See also 5 C.F.R. § 410.404.

There are many exceptions as to whom the GETA applies. For example, it does not apply to foreign service personnel or military personnel in certain circumstances. Before relying on the GETA, confirm that it applies to your client.

1.1 How Do You Determine Whose Conference It Is?

To begin your analysis of any conference question you receive, it is helpful first to classify the conference as one of three types: a conference that an agency co-sponsors with a non-Federal entity; a conference hosted by a non-Federal entity, or a conference hosted by a Federal agency.² Statutes and regulations that apply to one type of conference may not apply to another type. OGE has divided this guide into three sections corresponding to these three types.

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

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

The EPA has composed a series of “decision indicators” for each of the questions to help the agency determine what type of conference is involved. In addition, the General Services Administration (GSA) and the Department of Health and Human Services (HHS) have prepared agency memorandums that provide additional characteristics of a co-sponsored conference. OGE has adapted the EPA’s “decision indicators” for use by any Federal agency. See the table on the following page.

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

² Conferences co-hosted with other Federal agencies are not covered in this guide. OGE will consider adding this topic in the next edition of this guide.

WHOSE CONFERENCE IS IT?

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

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

2.0 Introduction: What is Co-Sponsorship?

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

- 1) The purpose of the conference is for the agency and the non-Federal entity to:
 - advance the mission of the Federal agency where the non-Federal entity shares a mutual interest in the subject matter of the event and possesses expertise that adds substantive value to the purpose of the event; or
 - develop products for goals common to the Federal agency and non-Federal entity

- 2) Decisions are shared among the parties to the conference, including control of:
 - agenda planning,
 - speaker selection,
 - location selection, and
 - conference logistics.

3) Participation in the event must be open to both Federal employees and members of the interested public. If participation is limited to Federal employees only, a co-sponsorship is not an appropriate arrangement to use to organize the event. This description of co-sponsorship excludes an arrangement in which the non-Federal entity provides funding only and does not participate in developing the substantive parts of the conference.

Although there is no single definition of co-sponsorship applicable throughout the Executive Branch, some agencies have definitions that apply within the agency. The Small Business Administration (SBA), for example, has statutory authority to co-sponsor certain events. See 15 U.S.C. § 633(h). The SBA defines a “cosponsored activity” as “an activity, event, project or initiative, designed to provide assistance for the benefit of small business as authorized by section 4(h) of the Small Business Act, which has been set forth in an approved written Cosponsorship Agreement.” 13 C.F.R. § 106.101(b)

The Department of Defense (DoD) has defined the term “co-sponsorship” in a regulation, the Joint Ethics Regulation (JER), DoD 5500.7-R. DoD’s definition of co-sponsorship is more expansive in one way than the definition OGE has chosen to use in this guide. DoD has authority under paragraph 3-206 of DoD 5500.7-R to co-sponsor a conference with a non-Federal entity. Similar to several other agency definitions, the DoD definition of co-sponsorship includes the situation in which the DoD Component command or organization is “one of the organizations that develops the substantive aspects of the event.” The DoD definition also includes two instances in which the DoD Component command or organization “provides substantial logistical support for the event.” DoD 5500.7-R, paragraph 3-206. DoD in limited circumstances, but not HHS, can be a co-sponsor of an event if it does not develop the substantive aspects of the event. The broader definition may also affect the type of document that DoD can use to memorialize the co-sponsorship depending upon whether the Component

May 2010
Co-Sponsored Conferences

command or organization develops substantive content for the conference or simply provides logistical support.

While DoD allows co-sponsorship in limited situations where it does not contribute to the substantive content of the conference, DoD imposes specific restrictions on both types of co-sponsorship of a conference. All of the following criteria, which are listed in paragraph 3-206b, must be met:

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

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

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

May 2010 Co-Sponsored Conferences

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

2.1.1 Use of a contract

2.1.1.1 Contract under the Federal Acquisition Regulation

An agency may enter into a contract in order to co-sponsor a conference with a non-Federal entity. Executive branch agencies are directed to use contracts when “the principal purpose is to acquire . . . property or services for the direct benefit or use of the . . . government.” 31 U.S.C. § 6303. A contract is a proper vehicle in situations in which the federal agency is acquiring conference planning services.

In determining when to use a contract as a vehicle for holding a conference, agency ethics officials should direct clients to their procurement office.

2.1.1.2 No-cost contract

There is nothing in executive branch standards of conduct that prohibits the use of a no-cost contract with a co-sponsor. See 4.1.1.2 of this guide for an in-depth discussion of the use of non-cost contracts in conjunction with a conference, including a GAO opinion on the matter.

2.1.2 Use of a memorandum of understanding

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

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

2.1.3 Use of a cooperative agreement

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

Not every agency has authority to use a cooperative agreement. According to GAO, an agency needs authority to enter into a cooperative agreement because it is an assistance arrangement that contemplates “active involvement” by the Federal agency. See GAO Redbook at

May 2010
Co-Sponsored Conferences

chapter 10, Part B, 2; see also *GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities)*, presented at the 2006 Appropriations Law Forum. 31 U.S.C. § 6305 does not itself serve as authority for an agency to enter into cooperative agreements. That authority must be found in a statute other than 31 U.S.C. § 6305, for example, in an agency's appropriations act. *Bureau of Land Management—Payment of Printing Costs by the Milwaukee Field Office*, B-290900, March 18, 2003. See also *Small Business Administration Questions about Funding of Small Business Development Centers*, B-229873 (November 29, 1988). (Pursuant to 15 U.S.C. § 648, the Small Business Administration is authorized to use cooperative agreements in establishing Small Business Development Centers in 15 U.S.C. § 648.) In the absence of specific authorization such as this, an agency will not be able to use a cooperative agreement.

For those agencies that do have authority to use cooperative agreements, this guide, as mentioned above, uses the term “cooperative agreements,” as it is referred to in the Federal Grant and Cooperative Act of 1977, 31 U.S.C. §§ 6301-6308. When the principal purpose of the agreement is to transfer a thing of value to the recipient to carry out a public purpose of support authorized by a U.S. law and substantial involvement is expected between the Federal Government and the other entity, a cooperative agreement is an appropriate instrument to use. In addition, the Inspector General of the Department of Justice found in one instance that agency regulations relating to a specific program did not allow for a cooperative agreement between the Federal agency and a for-profit entity. See Chapter 8, DOJ Conference Expenditures, Audit Report 07-42, September 2007, OIG.

The “substantial involvement” required by the statute dovetails with the requirement of a co-sponsorship that both the Federal agency and the non-Federal entity contribute in developing the subject matter of the event. “Substantial involvement” by both entities can include preparing the agenda and the topics for discussion and contributing panel members for sessions at the event. If these elements are missing, the event is not a candidate for a cooperative agreement, nor is it a suitable candidate for a co-sponsorship.

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

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

In its guide on conferences, the EPA addresses the issue of the proper document or combination of documents to use to arrange or organize, not only a co-sponsored conference, but

May 2010
Co-Sponsored Conferences

also the other two types of conferences. See EPA Guide, “Best Practices Guide for Conferences (November 28, 1998). The EPA uses the term “assistance agreement” to refer to grants and cooperative agreements. For co-sponsored conferences, the EPA advises its employees that, if they are considering an assistance agreement, they should use a cooperative agreement rather than a grant.

2.1.4 Use of a partnership

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

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

2.2 Permissible Actions in Seeking Qualified Co-Sponsors

2.2.1 General

Some agencies may have the authority to actively seek out qualified co-sponsors for a contemplated event.³ There are, however, two areas of concern with respect to the recruitment of potential co-sponsors.

2.2.2 Appearance of coercion

The agency must be careful to avoid any appearance that it is coercing an outside entity to become a co-sponsor. This appearance is most likely to arise when the agency solicits potential co-sponsors who have interests that could be affected significantly by pending agency action. Therefore, great care should be taken when the agency actively solicits “prohibited sources” to become co-sponsors. Where practicable, for example, agency personnel who participate substantially in official matters affecting a non-Federal entity should not be the ones to make overtures toward that entity about a possible co-sponsorship. 5 C.F.R. § 2635.101; Joint Ethics Regulation, DoD 5500.7-R, para. 3-206(b)(3); HHS Co-Sponsorship Guidance, August 2002.

2.2.3 Appearance of favoritism

An agency must be careful to avoid the appearance that it is showing favoritism by approaching only certain entities, when other qualified entities could derive a benefit from entering

³ Some agencies may not have the authority to solicit co-sponsors of a conference. The HHS Office of the General Counsel has issued guidance stating that its employees do have the authority to do solicit co-sponsors.

May 2010
Co-Sponsored Conferences

into the particular co-sponsorship with the agency. Where practicable, the agency should make the opportunity for a co-sponsorship known to all similarly situated entities. In some instances, for example, HHS has published a Federal Register notice to announce the opportunity for a co-sponsorship. For some events, it may not be feasible to engage more than one co-sponsor or even to make the opportunity for a co-sponsorship known to all qualified entities. At the very least, however, the agency must be able to articulate a reasonable basis for limiting its field of prospective co-sponsors. HHS Co-Sponsorship Guidance, August 2002.

2.3 Potential Co-Sponsors

2.3.1 Contributor of funds or logistical support

An agency may not enter into a co-sponsorship with a non-Federal entity that would contribute funding, logistical services, or other material support for an event, but would not participate in the development of the substantive aspects of the event. Such a contribution alone could constitute an augmentation of appropriations and may not be accepted, unless authorized by an applicable agency gift acceptance statute or other statutory authority. HHS Co-Sponsorship Guidance, August 2002; GSA Guidance for Conducting Conferences, August 2008.

According to the Comptroller General,

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

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

Federal Communications Commission—Acceptance of Rent-Free Space and Services at Expositions and Trade Shows, page 3, June 28, 1984.

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

- the use of the gift is in connection with any program, project, or activity that would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;

May 2010
Co-Sponsored Conferences

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

The regulation also prohibits DoD from accepting gifts offered indirectly through an intermediary if it could not accept the gifts directly from the source (paragraph 300506). There are further restrictions on the acceptance of gifts from foreign governments and international organizations (paragraph 300507B). If the gift from a potential co-sponsor is valued in excess of \$10,000, the acceptance authority must consult with the ethics counselor to, among other things, ensure that the "donor does not have interests that may be affected substantially by the performance or nonperformance of the Department of Defense employee's official duties." See paragraph 300507A.

2.3.2 Contributor with lack of substantive interest

An agency may not enter into a co-sponsorship with a non-Federal entity that does not have a demonstrable substantive interest in the subject matter of the event. Although such an entity is not a permissible co-sponsor, an agency may be able to accept a contribution of goods or services under an applicable agency gift acceptance statute or other statutory authority. GSA Guidance for Conducting Conferences, August 2008.

2.3.3 Co-sponsor created for event

As a general rule, an agency should not co-sponsor an event with an entity created solely for involvement in that particular event. In exceptional cases, however, special circumstances or agency needs may reasonably require a co-sponsorship with an entity that is newly created for the purpose of developing the event. In such cases, the agency must exercise special caution to ensure that the new entity is not merely a vehicle for other persons or organizations that would be inappropriate co-sponsors themselves. GSA Guidance for Conducting Conferences, August 2008

2.3.4 Prohibited sources

Any proposed co-sponsorship with an entity that would be deemed a "prohibited source," under the Standards of Ethical Conduct for Employees of the Executive Branch, should be reviewed with particular care. A "prohibited source" is any person or entity that: (a) is seeking official action by the agency planning the event; (b) does business or seeks to do business with that agency; (c) conducts activities regulated by that agency; (d) has interests that may be substantially affected by the performance or nonperformance of the official duties of an employee of that agency; or (e) is an organization the majority of whose members are described in (a) through (d) above. HHS Co-Sponsorship Guidance, August 2002. [Note: This definition is based on the

May 2010
Co-Sponsored Conferences

definition of “prohibited source” in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.203(d).]

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

- Is the event one which serves an important agency mission?
- Is there another available co-sponsor that is not a prohibited source, or does the prohibited source have a special expertise or status that would make it the preferred co-sponsor of the event?
- What would be the nature of the prohibited source's involvement in the event? To what extent will the prohibited source take an active and important role in the development of the substantive portions of the event?
- Would co-sponsoring an event with the prohibited source create the appearance of partiality toward that source or the appearance of an endorsement of that source with respect to other matters that it has pending before the Government?
- Does the prohibited source regularly apply for contracts, grants, or other financial relationships with the agency component co-sponsoring the event? Do grants, contracts, or other financial relationships with the agency component represent a significant percentage of the source's overall budget? If either of these is the case, the agency component may not co-sponsor an event with that prohibited source unless the benefits to the Department clearly outweigh any potential appearance of undue influence or preferential treatment.
- Are significant activities of the prohibited source regulated by the agency component co-sponsoring the event? If so, the agency component may not co-sponsor an event with that prohibited source unless the benefits to the agency clearly outweigh any potential appearance of undue influence or preferential treatment. HHS Co-Sponsorship Guidance, August 2002.

Some agencies may have lists of prohibited sources for their agencies. For example, DoD components should refer to the DoD contractor list on DoD SOCO's website and also any list that their local contracting office maintains.

2.3.5 Specific agency restrictions

Some agencies may have additional restrictions on what types of entities may serve as appropriate co-sponsors.

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

May 2010
Co-Sponsored Conferences

2.4 Publicity/Promotion

2.4.1 Endorsement concerns

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

SBA, for example, must receive appropriate recognition in all material produced pursuant to the co-sponsored activity, including use of SBA's logo. Once a co-sponsored activity has been approved, the co-sponsor may use its name in connection with SBA's only in factual publicity for that specific co-sponsored activity. Factual publicity includes dates, times, locations, purposes, agendas, fees and speakers involved with the activity. Such factual publicity should not imply that the involvement of SBA in the event is an endorsement of the general policies, activities, products or services of the co-sponsor. Any printed or electronically-generated material containing the names and logos of SBA, a cosponsor or a donor must include both a disclaimer that the co-sponsored activity does not constitute or imply an endorsement by SBA or the co-sponsor or donor, or any of their products or services, and the co-sponsorship authorization number. For co-sponsored activities involving for-profit co-sponsors, the co-sponsor must agree to clear all such material in advance (with the agency official) to ensure compliance with these restrictions. See SBA, Outreach Activities, SPO 90 75 3 (April 27, 2007).

2.4.2 Reserved—Promotional items

2.5 Registration Fees

Generally, an agency may not augment its appropriation. For further discussion of this principle, see 2.3.1 of this guide.

2.5.1 When the agency may collect and retain the fee

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

2.5.2.1 Reserved

2.5.2.2 Free attendance by Federal agency employees

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

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

If there is no agreement between the agency and the non-Federal entity co-sponsor about free attendance for Federal employees, employees may accept individual offers of free

May 2010
Co-Sponsored Conferences

attendance if such acceptance is in accordance with the Standards of Conduct. For example, the conference may qualify as a widely attended gathering. HHS Co-Sponsorship Guidance, August 2002.

2.5.3 Specific agency guidance

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

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

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

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

The components within DoD may have additional guidance on registration fees for co-sponsored conferences. For example, the Air Force addresses this issue in paragraph 4.42.6 of AFI 65-601, Volume 1, *Budget Guidance and Procedures*, 3 March 2005. According to this paragraph, the Air Force is permitted to have its co-sponsor handle the administrative arrangements, including the collection of the registration fee. OGE does not read the paragraph to mean that an entity that handles only administrative tasks is a co-sponsor. Reading this paragraph together with the DoD definition of co-sponsorship in 3-206, a co-sponsor must also contribute to the development of the substantive aspects of the conference. If the co-sponsor is responsible for collecting the fees, the attendees of the co-sponsored conference (DoD personnel, non-DoD Federal personnel, and non-Government personnel) pay the registration fee to the non-Federal co-sponsor.

2.6 Travel Expenses for Non-Federal Attendees

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

May 2010
Co-Sponsored Conferences

31 U.S.C. § 1345 provides:

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

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

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

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

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

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

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

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

May 2010
Co-Sponsored Conferences

In addition, some agencies may have additional authority to provide speakers fees or travel for non-Federal attendees under invitational travel orders, 5 U.S.C. § 5703. For a more detailed discussion of this topic, consult GAO's *Principles of Federal Appropriations Law* (Red Book), Volume 1, January 2004, pages 4-37 through 4-51.

2.7 Providing Meals, Snacks, and Refreshments

2.7.1 Federal employees at their official duty station

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

There are certain limited statutory exceptions to this general prohibition of which the following are relevant to conferences. In the first instance, appropriated funds may be used to pay for meals for those Federal employees who are on travel orders. 5 U.S.C. § 5701 (“Under regulations prescribed . . . an employee when traveling on official business . . . is entitled to” travel expenses and per diem allowance). Per diem rates incorporate a definition of “subsistence” as “lodging, meals, and other necessary expenses for the personal sustenance and comfort of the travel.” 5 U.S.C. § 5701(3), cited in *Memorandum Opinion for the General Counsel, Environmental Protection Agency – Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences*, April 5, 2007. Employees on official travel status must deduct the cost of meals provide at the conference from their per diem when they file their travel voucher. The costs of refreshments provided at the conference do not have to be deducted.

A second exception is the training exception derived from the Government Employees Training Act (GETA), 5 U.S.C. § 4109. Pursuant to that provision, Agency heads are authorized to pay the cost of “services or facilities directly related to the training of the employee.” 5 U.S.C. § 4109(a)(2)(F). The Comptroller General has held that this language constitutes specific statutory authority for Federal agencies to provide food “at government expense to employees attending an authorized training program when provision of that food is necessary to achieve the objective of the training program.” *Matter of Pension Benefit Guaranty Corp*, B-270199, at page 2.

Meals may be provided at conferences that meet the requirements of 5 U.S.C. § 4109. In order for a meal at a training program or conference to be eligible for reimbursement under this exception, the Comptroller General has declared that: (1) the employee’s attendance at the meal must be necessary in order for him or her to obtain the full benefit of the training program; and (2) the employee cannot have been free to partake of his or her meals elsewhere without being absent from essential formal discussions, lectures, or speeches concerning the purpose of the training. *Matter of Coast Guard – Meals at Training Conference*, B-244743, at page 2 (1992).

Another statutory exception that may be applicable to conferences is the meetings exception which flows from the language of 5 U.S.C. § 4110. In accordance with that statute, “[a]ppropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the

May 2010
Co-Sponsored Conferences

appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.” Where a conference meets the requirements of the meeting exception, meals and refreshments may be reimbursed.

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

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

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

The second and third elements of the test are closely related and focus on the timing of the meal or snack periods and the nature of the activity taking place during these periods. Meal or snack periods that take place prior to or after the conclusion of the day’s meeting session are inherently suspect. Substantial meeting functions must take place during the meal or snack periods. Networking and icebreaker sessions are not sufficient. In a case on this point, the Comptroller General has held that the provision of food “during a preliminary social gathering of seminar attendees or at coffee breaks” could not be paid for with appropriated funds. *Matter of Pension Benefit Guaranty Corp*, B-270199, at pages 2 - 3 (1996). The Comptroller General based this determination of the fact that “had no food been provided, i.e., had the employees obtained

May 2010
Co-Sponsored Conferences

breakfast or beverages with their own resources, the [conference] would have occurred as planned and the objectives of the [conference] would have been achieved nonetheless.” Id. In the view of the Comptroller General, the social interaction sought to be achieved by such preliminary gatherings, although possibly desirable, is not an essential or integral part of the meeting itself. Id.

2.7.2 Reserved—Federal employees away from their official duty station

2.7.3 Non-Federal attendees

The prohibition in 31 U.S.C. § 1345 (see paragraph 2.6 of the guide for the text of the statute) applies to “subsistence expenses.” Are the costs of light refreshments “subsistence expenses”? In 2007 OLC issued an opinion, in response to a question from the Environmental Protection Agency (EPA) about whether appropriated funds may be used to pay for light refreshments at a conference.⁴ See *Memorandum Opinion for the General Counsel, Environmental Protection Agency—Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences, April 5, 2007*. OLC first addressed the issue of the meaning of the term “meeting.” OLC stated that its broad interpretation of “meeting” from its 2004 opinion for the Department of Commerce was controlling for the executive branch. The 2004 opinion is discussed in paragraph 2.6 of this guide. OLC concluded that the definition includes a conference.

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

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

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

The first four statutes generally authorize the EPA to fund the training of non-Federal personnel. The last four statutes allow the EPA to encourage or fund research. The question presented by the EPA was whether the general authority to fund training and research to be shared with non-Federal personnel was the specific authorization described in the exception in 31 U.S.C.

⁴ Although the question was asked in the context of an EPA-hosted conference, the rationale behind the OLC’s decision applies to the expenditure of appropriated funds for a co-sponsored conference.

May 2010
Co-Sponsored Conferences

§ 1345. OLC noted that none of the statutes cited by the EPA had provisions regarding travel, transportation, and subsistence. OLC determined that general authority to fund a meeting is not sufficient to permit the use of appropriated funds for “travel, transportation and subsistence” and that none of these statutes were specific authority for using appropriated funds to pay for light refreshments for non-Federal personnel at conferences. This position is consistent with several decisions from the Comptroller General. See *Mine Safety and Health Administration—Payment of Travel Expenses at Seminars*, B-193644 (July 2, 1979) and *Matter of: Use of Appropriated Funds in Connection with National Solid Waste Management Association Convention*, B-166506 (July 15, 1975).

What statutes contain specific authority to use appropriated funds for this purpose? In separate opinions, the Comptroller General has found required specificity in two statutes, 100 Pub. L. 485, § 126, 102 Stat. 2354 (1988) and Public Law 530, § 1, 68 Stat 532 (1954). The common factor in the case of both statutes is that they required a conference, rather than merely authorized a conference. See *Matter of: Commission on Interstate Child Support—Payment of Lodging and Meal Expenses of Certain Attendees at the National Conference on Interstate Child Support*, B-242880 (March 27, 1991), and *Appropriations—Availability—Travel Expenses of Delegates to White House Conference on Education*, 35 Comp. Gen. 129 (1955). Further discussion of this issue and citations to other cases can be found in GAO’s *Principles of Federal Appropriations Law* (Red Book), vol. I, ch. 4, 3rd ed., pages 4-45 to 4-47.

2.8 Reserved

2.9 Fundraising

2.9.1 Reserved

2.9.2 Reserved

2.10 Reserved

2.11 Promotional Items

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

May an executive branch employee accept promotional items given away by the non-Federal entity co-sponsor? It depends. The Standards of Conduct for Employees of the Executive Branch has a broad definition of “gift”—any item that has a monetary value. 5 C.F.R. § 2635.203(b). Unless the promotional item fits within one of the nine exclusions from the definition, it will probably be considered a gift. If the non-Federal entity co-sponsor is a prohibited source or the item was given because of the employee’s official position, the employee may not accept the item unless one of the gift exceptions applies. One of the exceptions that may be helpful in the case of promotional items is the exception allowing executive branch employees to accept items having a value of \$20 or less. 5 C.F.R. § 2635.204(a). If the fair market value of the item is \$20 or less, the employee may accept the gift. Employees relying on this exception must keep in mind the limitations on the use of this exception. For example, if the non-Federal entity co-sponsor is giving away more than one promotional item, the employee must aggregate the value of the

May 2010
Co-Sponsored Conferences

items. An employee may not accept more than \$50 worth of items from a single source in a calendar year.

2.11.2 Provided to Federal attendees by exhibitors

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

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

2.11.3.1 Using appropriated funds

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

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

- a. Ashtrays bearing a seal given to federal officials⁵
- b. Novelty items (pens, scissors, shoelaces) used to support recruitment efforts⁶
- c. Baseball caps for recruitment efforts⁷
- d. Caps for volunteers⁸
- e. Novelty garbage cans containing candy in the shape of solid waste⁹
- f. Ice scrapers imprinted with safety slogans¹⁰
- g. Buttons demonstrating GSA’s commitment to an alternative energy program¹¹

⁵ 53 Comp. Gen. 770 (1974)

⁶ B-247563.3, 1996 U.S. Comp. Gen. LEXIS 414 (1996)

⁷ B-260260, 96-1 Comp. Gen. Proc. Dec. P131 (1995)

⁸ B-201488, 1981 U.S. Comp. Gen. LEXIS 1740 (1981)

⁹ 57 Comp. Gen. 385 (1978)

¹⁰ B-223608, 1988 U.S. Comp. Gen. LEXIS 1582 (1988)

May 2010
Co-Sponsored Conferences

- h. Key chains bearing a symbol intended to generate future responses from seminar participants¹²

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

- a. Buttons and magnets from the EPA that contain messages related to improving air quality, messages that furthered “EPA’s statutory function of increasing public awareness of indoor air quality”¹³
- b. Matchbooks and jar grip openers for recruitment efforts and for informing veterans of available services¹⁴
- c. Wall calendars prepared by the U.S. Army¹⁵
- d. Lava rocks as gifts for visitors to a park to discourage unauthorized removal of similar rocks from the park¹⁶
- e. Balloons that were to be released from a parade float to publicize a Department of Labor employment program¹⁷
- f. Framed posters prepared by the U.S. Army¹⁸

In a 2009 decision, GAO addressed the issue of whether any agency may use appropriations to distribute items generally considered personal gifts and that could not, as a general rule be distributed without statutory authority. The opinion allowed an exception to this general rule where the Fish and Wildlife Service asked in advance whether it could use appropriations to distribute items without the agency logo such as T-shirts, baseball caps, stocking caps and coffee mugs. GAO found this would be a proper expenditure of appropriations as it was part of a strategic education plan designed after traditional methods of public outreach and education failed to halt the decline of a threatened waterfowl species.¹⁹

2.11.3.2 Solicitation

Agency staff may not engage in fundraising, or solicitations for donations of any kind, to support an event, except as may be authorized by law. Agency staff may not solicit any gifts for the agency, for any purpose whatsoever, absent statutory authority. Furthermore, although an agency may have authority, under limited circumstances, to assist in certain fundraising efforts of non-Federal entities (5 C.F.R. § 2635.808(b)), an agency should not assist in any fundraising efforts designed to meet a co-sponsor’s share of the costs of an event. Such efforts too easily may be perceived as—and may in fact become—attempts to raise funds to benefit the agency itself. HHS Co-Sponsorship Guidance, August 2002.

An agency may be able to solicit entities for items to distribute at the conference. In January 2001, the Office of Legal Counsel for the Department of Justice issued an opinion to the Director of the U.S. Office of Government Ethics about the authority of a Federal agency to solicit gifts. *Memorandum Opinion for the Director, Office of Government Ethics—*

¹¹ B-192423, 1978 U.S. Comp Gen. 2060 (1978)

¹² 54 Comp. Gen. 976 (1975)

¹³ 72 Comp. Gen. 73 (1992)

¹⁴ B-247563.2, 1993 U.S. Comp. Gen LEXIS 454 (1993)

¹⁵ 62 Comp. Gen. 566 (1983)

¹⁶ B-193769, 1979 U.S. Comp. Gen. LEXIS 3003 (1979)

¹⁷ B-62501 (1947)

¹⁸ B-230062 (22 Dec 88) and B-234241 (3 May 89)

¹⁹ B-318386, August 12, 2009. (A copy of this case is not included on the flash drive as it was added after the flash drive was finalized for the conference.)

May 2010 Co-Sponsored Conferences

Authority to Solicit Gifts, January 19, 2001. The Office of Legal Counsel determined that an agency's "express statutory authority to accept gifts included the implicit authority to solicit gifts." Among the agencies that have statutory authority to accept gifts and therefore the authority to solicit gifts are the Departments of Justice, Treasury, State, and Commerce and the U.S. Office of Government Ethics. An agency that does not have gift acceptance authority, however, does not have the authority to solicit gifts.

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

Often, a non-Federal co-sponsor will want to raise funds from various donors in order to help meet its allotted share of the costs of an event. As a practical matter, an agency cannot become involved in scrutinizing the fundraising activities of its co-sponsors. However, a non-Federal co-sponsor must give the following assurances: (a) that any solicitation will make clear that the non-Federal co-sponsor, not the agency, is asking for the funds; (b) that the non-Federal co-sponsor will not imply that the agency endorses any fundraising activities in connection with the event; and (c) the non-Federal co-sponsor will make clear to donors that any gift will go solely toward the expenses of the non-Federal co-sponsor, not the agency. HHS Co-Sponsorship Guidance, August 2002.

2.12 Reserved

2.13 Specific Agency Guidance

2.13.1 General Services Administration

The General Services Administration (GSA) has issued a memorandum for its employees on the topic of conferences. The memorandum also covers co-sponsored conferences. A copy of the memorandum is attached to this guide. Ethics counselors for GSA should refer to this memorandum when answering questions about conferences.

2.13.2 Department of Health and Human Services

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

2.13.3 Environmental Protection Agency

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

2.13.4 U.S. Air Force

May 2010
Co-Sponsored Conferences

The U.S. Air Force Reserve Command has written a guide addressing issues that arise with a particular type of non-Federal entity, the professional military association (PMA) such as the Air Force Association and the Non Commissioned Officers Association. The guide covers many topics, including conferences. The guide discusses co-sponsoring a conference with a PMA, providing limited logistical support to a conference hosted by a PMA, and acquiring support for a PMA to an Air Force hosted conference.

Chapter 3: Non-Federal Entity Conferences

3.0 Introduction

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

The level of support that a Federal agency may provide to a conference hosted by a non-Federal entity is only one of the issues that arises. Other issues include the acceptance of free attendance and travel expenses by Federal employees.

3.1 Federal Agency Speakers

3.1.1 Official Participation

If the Federal employee is speaking in his or her official capacity, he or she is prohibited by 18 U.S.C. § 209 from receiving compensation for speaking. He or she may accept “meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the . . . event takes place” and items of little monetary value such as a commemorative plaque. These meals and other incidents of attendance are not considered gifts to the employee. 5 C.F.R. § 2635.807(a)(2)(iii)(A) and (B). See OGE Advisory Opinion 98x14 (August 31, 1998).

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

When an employee serves as an officer, director, or employee of a non-Federal entity, 18 U.S.C. § 208 may preclude him or her from serving as an official agency speaker at a conference hosted by that non-Federal entity. 18 U.S.C. § 208 prohibits an employee from “participating personally and substantially in an official capacity in any particular matter affecting the financial interests of an organization in which the employee serves as an officer, director, or employee, unless he obtains a waiver under 18 U.S.C. § 208(b).” OGE Advisory Opinion 98x14 (August 31, 1998).

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

If the Federal employee does not hold a position with non-Federal entity but is an active participant in the entity, there may be an appearance problem. Under 5 C.F.R. § 2635.502, “an employee should not participate in certain assignments involving an organization in which he is an active participant, if a reasonable person with knowledge of the relevant facts would question his impartiality.” Advisory Opinion 98x14 (August 31, 1998).

3.1.2 Unofficial participation

If the Federal employee is speaking in his or her unofficial capacity, he or she must comply with any prior approval requirement that the agency has for outside activities. For example, the Commodity Futures Trading Commission requires its employees to obtain approval for any outside speaking activity, both compensated and uncompensated. 5 C.F.R. § 5101.103(c)(1). Its employees

May 2010

Non-Federal Entity Conferences

are not required to obtain permission if the activity is to be undertaken for a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization and is to be done without compensation. 5 C.F.R. § 5101.103(c)(5).

The Federal employee cannot receive compensation if the speaking activity is related to his official duties even though it is undertaken in his personal capacity. 5 C.F.R. § 2635.807. Generally, “speaking is considered related to duties if the subject of the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period, or any ongoing or announced policy, program or operation of the employee’s agency.” OGE Advisory Opinion 98x14 (August 31, 1984); 5 C.F.R. § 2635.807(a)(2)(i)(E)(1) and (2).

3.1.3 Reserved

3.1.4 Reserved

3.2 Free Attendance for Federal Employees

3.2.1 General guidance

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

3.2.2 Specific agency guidance

DoD has additional regulatory authority allowing a DoD employee to accept free attendance at certain types of conferences. The Joint Ethics Regulation, para. 2-202, allows a DoD employee and the spouse of the DoD employee to accept free attendance at a conference hosted by a state or local government or a tax-exempt civic organization when the following 3 conditions are met:

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

3.3 Reserved

3.4 Reserved

3.5 Reserved

May 2010

Non-Federal Entity Conferences

3.6 Reserved—Prizes Won at a Drawing at a Conference

3.7 Miscellaneous Restrictions on Federal Logistical Support

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

DoD Directive 5410.18, *Public Affairs Community Relations Policy*, 20 Nov 01, in paragraphs 4.2.19, 4.3.6.5, and 4.3.6.6, sets forth the process for requesting flyovers for events sponsored by non-Federal entities and the restrictions on this type of logistical support. Additional requirements are set by the Air Force in AFI 35-105, *Community Relations*, 26 Jan 10, para. 15.

3.8 Specific Agency Guidance

Many non-Federal entities may have memberships comprised primarily of current and former civilian employees, current and former active duty military, families of active duty military, and current and former reservists. These organizations are so closely aligned with the interests of the Federal agency or military branch that both Government employees and organization members may fail to see the line between the two entities especially when working together to host a conference. It is helpful to remind clients that organizations not specifically delineated have no special relationship or legal status with regard to the Government agency.

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

- Certain banks and credit unions (DoD Directive 1000.11)
- United Service Organization (USO) (DoD Directive 1330.12)
- Labor organizations (5 U.S.C. Chapter 71; DoD 1400.25-M, Chapter 711)
- Combined Federal Campaign (E.O. 10927; DoD Directive 5035.1)
- Association of Management Officials and Supervisors (DoD Instruction 5010.30)
- American Registry of Pathology (10 U.S.C. § 177)
- Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. § 178)
- American National Red Cross (10 U.S.C. § 2552)
- Boy Scouts Jamborees (10 U.S.C. § 2554)
- Girl Scouts international events (10 U.S.C. § 2555)
- Shelter for homeless (10 U.S.C. § 2556)
- National military associations (assistance at national conventions) (10 U.S.C. § 2558)
- Assistance from American National Red Cross (10 U.S.C. § 2602)
- United Seaman's Service Organization (10 U.S.C. § 2604)
- Scouting (cooperation and assistance in foreign areas) (10 U.S.C. § 2606)
- Civil Air Patrol (10 U.S.C. §§ 9441-9442)

May 2010

Non-Federal Entity Conferences

Assistance for certain youth and charitable organizations (32 U.S.C. § 508)

Military Department of each State and territory

The citations are updated, as some of the statutes have been renumbered since the issuance of the last change to the Joint Ethics Regulation.

Each military branch may have further delineated organizations.

Chapter 4: Federal Agency Conferences

4.0 Introduction

A conference that is open only to Federal employees is not suitable for co-sponsorship. HHS Co-sponsorship Guidance, August 2002. It is considered to be an agency-hosted conference, but support from a non-Federal entity may be permissible. If a non-Federal entity seeks to contribute to a conference that is attended only by Federal employees, the ethics official should analyze the offer as the offer of a gift. An agency may be able to accept the contribution under the agency gift acceptance statute, if the agency has one. HHS Co-Sponsorship Guidance, August 2002.

4.1 Organizing a Government-Hosted Conference

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

4.1.1.1 Contract under the Federal Acquisition Regulation

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

4.1.1.2 No-cost contract

As contemplated by OLC and GAO²⁰, a no-cost contract for event/conference planning is carefully constructed so as to avoid fiscal issues (especially for agencies without authority to charge, retain and use fees for conferences). A no-cost contract is a contract between a Government agency and a non-Federal entity in which the Government agency has no financial liability to the non-Federal entity and the non-Federal entity has no expectation of payment from the Government agency. In other words, no appropriated funds are used, committed, or obligated. Under this type of contract, the non-Federal entity is dependent on third parties for payment.

The fees collected under a no-cost contract cannot be used for the benefit of the host agency that hires the event planner. Further, the fees collected do not compensate the event planner for any contractual obligation that the host agency owes to it or enable the agency to avoid expending appropriations. If a no-cost contract fails to conform with the above two requirements, it will likely cause fiscal issues as GAO has held that an agency may not permit its agent to charge and retain registration fees where the agency itself lacks statutory authority to charge and retain such fees. Cf *Contractors Collecting Fees at Agency-Hosted Conferences*, B-306663 (January 4, 2006); *Matter of: National Institutes of Health—Food at Government-Sponsored Conferences*, B-300826 (March 3, 2005). An agency must be careful in how it constructs a no-cost contract so as to avoid potential ADA violations.

²⁰ *Memorandum Opinion for the General Counsel, Department of Commerce—Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences*, November 22, 2006

T.V. Travel, Inc. et al, B-218198.6 (Dec 10, 1985)

Scheduled Airlines Traffic Office, Inc., B-257292.2 (May 16, 1995)

Downtown Copy Center, B-240488.8 (Dec 28, 1992)

May 2010
Federal Agency Conferences

As stated in the chapter on co-sponsored conferences, a no-cost contract is a contract between a Government agency and a non-Federal entity in which the Government agency has no financial liability to the non-Federal entity and the non-Federal entity has no expectation of payment from the Government agency. In other words, no appropriated funds are obligated. Under this type of contract, the non-federal entity is dependent on third parties for payment.

There does not appear to be much practical guidance available about the use of no-cost contracts for conferences. The authors of this guide did find one solicitation (Marine Corps) and one pre-solicitation (EPA) for no-cost contracts.²¹ Neither one involves a conference, but they may be useful for a general understanding of how at least two agencies prepare them. The language they used is found in the Attachments to this guide under “Model Documents and Formats from Agencies.”

In a GAO paper on no-cost contracts prepared for the 2008 Appropriations Law Forum, GAO stated that no-cost contracts were not governed by the Federal Acquisition Regulation (FAR). Both the Marine Corps and the EPA noted in the solicitation and the pre-solicitation that no-cost contracts were not governed by the FAR. Despite this acknowledgement, both the Marine Corps and the EPA incorporated certain FAR clauses.

As previously stated, neither of these contracts involved conferences. In a 2007 opinion, GAO addressed a no-cost contract for conference planning services. See *No-Cost Contracts for Event Planning Services*, B-308968 (November 27, 2007). National Conference Services, Inc. (NCSI) asked GAO to review a model no-cost contract. NCSI provides conference planning services to Federal agencies, “primarily the Department of Defense (DoD) and the Intelligence Community (IC),” according to its web site. Under a no-cost contract, NCSI would provide conference planning services at no cost to the Government agency and “would recoup its costs by charging exhibitors, sponsors, and attendees of the conference.” B-308968, at page 1. These services include selecting venues, coordinating logistics, marketing, and handling registration.

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

²¹ An electronic copy of the Marine Corps solicitation and of the EPA pre-solicitation is included in the Resource Guide. The EPA pre-solicitation can also be found at: http://www.epa.gov/oamhpd1/admin_placement/1000006/index.htm. Click on the link to the FedBizOpps Announcement.

May 2010
Federal Agency Conferences

avoiding costs to the agency, it does not take actions that compromise the effectiveness of its conference, undermine the achievement of agency goals, or violate ethics rules.” Id. At 5-6.

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

4.1.2 Reserved—Use of a memorandum of understanding

4.1.3 Use of a cooperative agreement and Government-hosted conferences

A cooperative agreement under 31 U.S.C. § 6305 is not an appropriate instrument to use to fund a government-hosted conference. Any support services that an agency obtains from a non-Federal entity for organizing a conference provides a direct benefit to the agency. 31 U.S.C. § 6303 requires that the agency use a contract, not a cooperative agreement, in these circumstances. In 1997, the Comptroller General issued an opinion in response to a request from the Inspector General of the Environmental Protection Agency (EPA) about the use of a cooperative agreement for an EPA conference. *Environmental Protection Agency—Inspector General—Cooperative Agreement—Procurement*, B-262110 (March 19, 1997). The EPA had entered into a cooperative agreement with the University of Kansas to provide management services for the EPA’s National Environmental Information Conference. The Assistant Regional Administrator chose this method to fund the conference. The amount awarded was approximately \$533,000. The attendees included EPA employees, employees of other Federal agencies, and representatives from non-Federal entities. The University of Kansas used some of the funds to pay the cost of travel, lodging, and meals for 171 of the non-Federal attendees. The Comptroller General noted that these expenditures would not have been permitted if a contract had been used. Appropriated funds could not be used to pay the travel and related expenses of the non-Federal attendees of this conference.

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

4.2 Co-Located Conferences and Events

Different from both co-sponsoring a conference and providing support to a non-Federal entity’s conference is the situation in which a non-Federal entity holds an event at a location near a Government conference, and the attendees of the Government conference are invited to attend the non-Federal entity’s event. GSA refers to this type of support as “collateral support” in its 2008 memo on conducting conferences. According to the GSA guidance, some of the types of events provided by the non-Federal entity are welcome receptions and training sessions. These types of events are often hosted by professional associations of which Government employees may be members. Interactions with these organizations can be important for various reasons, such as retention and promotion and scientific collaboration or the agency may be mandated by law to interact with the entity. For some agencies

May 2010
Federal Agency Conferences

there may be further requests from the outside entity for support in areas such as equipment. DoD refers to this type of support as “logistical support.”

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

4.2.1 Leave and attendance

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

The decision whether to grant leave or permissive TDY is a commander’s or supervisor’s decision, but they will often ask their legal counsel for advice as this may also be viewed as an issue relating to the use of Government resources. See e.g., 5 C.F.R. § 2635.705.

In considering leave and attendance issues, the factors on the following page (which are from an EPA presentation on professional associations) may be helpful.²²

²² A copy of the EPA presentation is not included on the flash drive as it was added after the flash drive was finalized for the conference.

**May 2010
Federal Agency Conferences**

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

Some executive branch agencies have regulations, guidance, or policies that allow employees to attend professional association events while on official duty. For example, the Air Force instruction on leave, AFI 36-3003 *Military Leave Program* (26 October 2009), authorizes a unit commander to grant permissive TDY to military members attending certain types of conferences. Following is a list of those conferences. The rules are found in Table 7 to the instruction:

- Meetings/seminars sponsored by non-Federal technical, scientific, professional (e.g., medical, legal, ecclesiastical, IT, and mechanical) societies and organizations (Rule 14)

- National conventions/meetings hosted by service-connected organizations such as the Air Force Sergeants Association and the Non-Commissioned Officers' Association (Rule 22)

May 2010
Federal Agency Conferences

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

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

4.2.2 Wear of the military uniform at a co-located event

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

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

4.3 Reserved

4.4 Reserved

4.5 Registration Fees

4.5.1 When the agency may collect and retain the fee

An agency may collect and retain fees from persons attending an agency-sponsored conference if there is a Federal statute that authorizes the agency to do so, e.g. the Economy Act, Government Employees Training Act or other specific agency authority.

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

A non-Federal entity that is providing meals, lodging, refreshments, or other goods or services to conference attendees may collect a fee from the conference attendees to cover its costs in providing such goods and services and may keep the fees that they collect. However, an agency cannot use a non-Federal entity to collect a fee for the agency that the agency could not collect for itself. The Office of Legal Counsel (OLC) reached this conclusion in a 2006 opinion it issued in response to a question from the Department of Commerce. Agencies should proceed cautiously in this area as the opinion applies to no-cost contracts, has limited applicability and lays out stringent requirements. See *Memorandum Opinion for the General Counsel, Department of Commerce*—

May 2010
Federal Agency Conferences

Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences, November 22, 2006.

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

[A]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.

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

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

In B-300826, March 3, 2005, GAO stated: "Our decisions have not addressed specifically whether the user fee statute authorizes an agency to charge a conference registration or attendance fee, and we need not address that question here. Even if we were to conclude that the user fee statute would permit [an agency] to charge a registration fee, we are aware of no specific authority that would permit [the agency in this case] to retain the proceeds." The user fee statute 31 U.S.C. § 9701, does not provide agencies authority to retain fees collected. See *Pension Benefit Guaranty Corporation Guaranty Corporation—Reimbursement for Financial Analysis Services*, B-307849 (March 1, 2007); *SBA's Imposition of Oversight Review Fees on PLP Lenders*, B-300248 (January 15, 2004).

4.5.3 Specific agency guidance

Many agencies have written guidance on the collection of fees. See, for example, NIH Policy Manual 6031.

10 U.S.C. § 2262 authorizes DoD to collect fees in advance, either directly or by using a contract (including a no-cost contract), from "any individual or commercial participant" attending DoD conferences. Under this statute, DoD may collect fees from agency employees, employees of

May 2010
Federal Agency Conferences

other Federal agencies, and non-Federal persons, such as state and local government employees and private sector employees, attending a DoD conference. The implementing regulation is DoD Financial Management Regulation, Volume 12, Chapter 32.

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

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

The components within DoD may have additional guidance on registration fees for service-sponsored conferences. For example, the Air Force addresses this issue in paragraph 4.42.5 of AFI 65-601, Volume 1, *Budget Guidance and Procedures*, 3 March 2005. According to this paragraph, the Air Force is permitted to hire a contractor, through normal acquisition procedures, to handle the administrative arrangements for a conference. The contractor may charge attendees a registration fee to cover the costs associated with the contract, “including a reasonable profit.” If a contractor is used, the contractor collects the registration fees from the attendees (DoD personnel, non-DoD Federal personnel, and non-Government personnel). For Air Force attendees, the registration fee collected under these circumstances is reimbursable and may be claimed on their travel vouchers. The AFI cautions that if the registration fee includes any meals, those meals must be deducted from the authorized per diem.

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

4.6 Travel Expenses for Non-Federal Attendees

See the discussion at paragraph 2.6 of this guide.

4.7 Providing Meals, Snacks, and Refreshments

4.7.1 Federal employees at their official duty station

Appropriated funds may be used to pay for meals and refreshments if there is a statute that authorizes the use of appropriated funds for this purpose. Whether or not appropriated funds can be used to pay for refreshments depends upon, among other factors, the nature of the conference. When the conference is actually training that meets the requirements of the Government Employees Training Act, 5 U.S.C. §§ 4101-4118, refreshments and meals may be provided with appropriated funds to certain Federal employees. Appropriated funds may be used to pay for meals for those Federal employees who are on travel orders. Those employees must, however, deduct the

May 2010
Federal Agency Conferences

cost of meals provided at the conference from their per diem when they file their travel voucher. The costs of refreshments provided do not have to be deducted.

4.7.2 Reserved—Federal employees away from their official duty station

4.7.3 Reserved—Non-Federal attendees

4.7.4 Reserved—Ceremonies

May 2010

Resources

Agency Guides

General Services Administration Memo: Guidance for Conducting Conferences (Aug 1, 2008)

Department of Health and Human Services: Co-Sponsorship Guidance (Aug 8, 2002)

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

Environmental Protection Agency's Best Practices Guide for Conferences (Nov 12, 1998)

Small Business Administration: Outreach Activities (guide for co-sponsored activities) (Apr 27, 2007)

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

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

National Institutes of Health Policy Manual 1160-1: Entertainment (last updated Apr 8, 2008)

Air Force: Air Force Reserve Commander's Guide to Involvement with Professional Military Associations (A "How-To" Manual) (June 2000) (Although not devoted to the topic of conferences, portions of the guide cover Air Force support to events hosted by professional military associations and to co-sponsoring events with these associations.)

Model Documents and Formats from Agencies

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

Air Force: Model Co-Sponsorship Agreement (undated)

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

Environmental Protection Agency: No Cost Contracts for Event Planning Services (Jan 29, 2008)

Language Used in No-Cost Contracts (contracts were not for conference services) (EPA pre-solicitation and Marine Corps solicitation)

Copy of EPA Pre-Solicitation

Copy of Marines Corps Solicitation

Air Force (AFMC): Questions to Ask an Employee Who Has Been Invited to Participate in a Non-Federal Entity Event (undated)

May 2010

Air Force (AFMC): Format for Opinion on a DoD Employee Speaking at a Non-Federal Entity Event (undated)

Air Force (AFMC): Format for Opinion on Travel Expenses from a Non-Federal Source (undated)

Statutes

5 USC 4101-4118 (Government Employees Training Act)

5 USC 4101 – Definitions

5 USC 4109 – Expenses of training

5 USC 4110 – Expenses of attendance at meetings

5 USC 4111 – Acceptance of contributions, awards, and other payments

5 USC 5946 – Membership fees; expenses of attendance at meetings; limitations

10 USC 2262 – Department of Defense conferences: collection of fees to cover Department of Defense costs

10 USC 2601-2610 (Department of Defense—Acceptance of Gifts and Services)

10 USC 2601 – General gift funds

10 USC 2608 – Acceptance of contributions for defense programs, projects, and activities

31 USC 1345 – Expenses of meetings

31 USC 1353 – Acceptance of travel and related expenses from non-Federal sources

31 USC 3302 (Miscellaneous Receipts Statute) – Custodians of money

31 USC 6301 – Using procurement contracts, grants, and cooperative agreements; purposes of chapter

31 USC 6303 – Using procurement contracts

31 USC 6305 – Using cooperative agreements

37 USC 412 – Appropriations for travel; may not be used for attendance at certain meetings

Code of Federal Regulations

5 CFR 410.404 – Determining if a conference is a training activity

5 CFR 410.501-503 – Implementing regulation for 5 USC 4111

May 2010

13 CFR Part 106 – Small Business Administration regulation on Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities and Gifts

41 CFR Part 301-74 (Federal Travel Regulation) – Conference Planning

41 CFR Appendix E to Chapter 301 (Federal Travel Regulation) – Suggested Guidance for Conference Planning

Joint Federal Travel Regulation/Joint Travel Regulation

Appendix R: Conferences

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

Agency Regulations

DoD Joint Ethics Regulation, 5500.7-R, para. 2-202a – Events Sponsored by States, Local Governments or Civic Organizations

DoD Joint Ethics Regulation 5500.7-R, para. 3-206 – Co-sponsorship

DoD Joint Ethics Regulation 5500.7-R, para. 3-207 through 3-209 – Participation in Conferences and Similar Events; Distributing Information; Endorsement

DoD Joint Ethics Regulation 5500.7-R, para 3-211 – Logistical Support of Non-Federal Entity Events

DoD Joint Ethics Regulation 5500.7-R, para. 3-212 – Relationships Governed by Other Authorities

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

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

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

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

AFI 35-105, *Community Relations*, 26 Jan 2010, paragraphs 8-10, 15, and 25 through 28 (Use of Military Aircraft for Events; Flyovers; Speeches and Public Appearances)

AFI 35-110, *U.S. Air Force Band Program*, 22 Jan 2010, paragraphs 6.1 through 6.4 and 8.4 (Performance at Events)

AFI 36-3003, *Military Leave Program*, 26 Oct 2009

AFI 61-205, *Sponsoring or Co-Sponsoring, Conducting, and Presenting DoD-Related Scientific Papers at Unclassified and Classified Conferences, Symposia, and Other Similar Meetings*, 25 Jul 1994, incorporating Change 1, 29 Aug 2006)

May 2010

AFI 65-601, Vol 1, *Budget Guidance and Procedures*, 3 March 2005, paragraphs 4.9, 4.26 through 4.31, and 4.42 (Honoraria; Ethnic and Holiday Observances, Traditional Ceremonies, and Entertainment; Award Ceremonies; Registration Fees)

Department of Energy: Order on Conference Management, DOE O 110.3A (Jan 25, 2007)

Environmental Protection Agency: Food at an EPA Conference, Order Classification No. 1900.3 (last reviewed Nov 22, 2009)

Opinions of the Office of Legal Counsel of the Department of Justice and Other DOJ Materials

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

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

Memo for Department of Commerce: Use of Appropriations to Pay Travel Expenses for an International Trade Administration Fellowship Program (Oct 7, 2004)

Memorandum Opinion for Office of Government Ethics: Authority to Solicit Gifts (Jan 19, 2001)

Office of the Inspector General, Audit Report 07-42, Chap 8: Registration Fees (Sep 2007)

Comptroller General Decisions and Opinions

B-317423 – Use of Appropriated Funds to Purchase Food for Participants in Antiterrorism Exercises (Mar 9, 2009)

B-308968 – No-Cost Contracts for Event Planning Services (Nov 27, 2007)

B-307849 – Pension Benefit Guaranty Corporation—Reimbursement for Financial Analysis Services (Mar 1, 2007)

B-306663 – Contractors Collecting Fees at Agency-Hosted Conferences (Jan 4, 2006)

B-301184 – U.S. Army Corps of Engineers—Food for a Cultural Awareness Program (Jan 15, 2004)

B-300826 – National Institutes of Health—Food at Government-Sponsored Conferences (Mar 3, 2005)

B-300248 – Small Business Administration—Imposition of Oversight Review Fees on PLP Lenders (Jan 15, 2004)

B-290900 – Bureau of Land Management—Payment of Printing Costs (Mar 18, 2003)

B-288266 – Use of Appropriated Funds to Purchase Light Refreshments at Conferences (Jan 27, 2003)

May 2010

- B-281063 – Nuclear Regulatory Commission—Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Served at NRC Workshops (Dec 1, 1999)
- B-262110 – Environmental Protection Agency—Inspector General—Cooperative Agreement versus Procurement (March 19, 1997)
- B-260896 – DoD Section 6 School Board Members—Invitational Travel Orders (Oct 17, 1996)
- B-260260 – Purchase of Baseball Caps by the Department of Energy (Dec 28, 1995)
- B-247563.2 – Expenditures by Department of Veterans Affairs for Rental of Booth Space at State Fair and for Promotional Items (May 12, 1993)
- B-247563.3 – Expenditures by Department of Veterans Affairs for Promotional Items (Apr 5, 1996)
- B-247563.4 – Expenditures for Food by the Department of Veterans Affairs Medical Center (Dec 11, 1996)
- B-244473 – Coast Guard—Meals at Training Conference (Jan 13, 1992)
- B-242880 – Commission on Interstate Child Support—Payment of Lodging and Meal Expenses of Certain Attendees at the National Conference on Interstate Child Support (Mar 27, 1991)
Atch to opinion – 102 Stat. 2343
- B-229873 – Small Business Administration—Cooperative Agreements and Bona Fide Needs Doctrine (Nov 29, 1988)
- B-210967, 62 Comp. Gen. 531 – Expenditures for Travel and Lodging by the National Highway Traffic Safety Administration (Jul 8, 1983)
- B-210620 – Federal Communications Commission—Acceptance of Rent-Free Space and Services Expenses at Trade Shows (Jun 28, 1984)
- B-193644 – Mine Safety and Health Administration—Payment of Travel Expenses at Seminars (July 2, 1979)
- B-183110, 55 Comp. Gen. 1332 – Travel Expenses—Honor Awards (Jul 29, 1976)
- B-166506, 55 Comp. Gen. 750 – Environmental Protection Agency—Travel Expenses—Convention, conferences, etc—Attendees—State Officials (Feb 12, 1976)
Prior opinion on this conference was issued Jul 15, 1975
- B-124969, 35 Comp. Gen. 198 – Travel Expenses of Delegates to White House Conference on Education (Oct 7, 1955)
Atch to opinion – 68 Stat. 532
Prior opinion on this conference was issued Aug 31, 1955 (35 Comp. Gen. 129)

May 2010

Papers, Presentations, and Redbook Excerpts from the Government Accountability Office

GAO Paper: FAQs on No-Cost Contracts, 2008 Appropriations Law Forum (Mar 13, 2008)

GAO Paper on Public/Private Sponsorships of Meetings and Conferences (Partnering Opportunities), 2006 Appropriations Law Forum (Apr 2006)

Flow Charts—Use of Appropriated Funds for Meals and Light Refreshments

GAO Redbook, Vol. 1 3d Ed. Ch. 4, pages 4-36 through 4-51 (Attendance at Meetings and Conventions)

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

07 x 8 – Reimbursement of travel expenses incurred as a result of speaking engagements (official or unofficial capacity) (Jun 28, 2007)

06 x 7 – Working with contractors (with attachment) (Aug 9, 2006)

05 x 5 – Prize won at conference attended in an official capacity (Aug 26, 2005)

99 x 7 – Prize won at conference attended in an official capacity (Apr 26, 1999)

98 x16 – Gift from co-sponsor of conference (Oct 15, 1998)

98 x 14 – Federal employees as speakers at conferences hosted by a non-Federal entity (official or unofficial capacity) (Aug 31, 1998)

96 x 18 – Golf tournament held in connection with conference (Oct 18, 1996)

94 x 14 – Federal employees as speakers at conferences hosted by a non-Federal entity (official capacity) (Jul 15, 1994)

94 x 1 – Federal employees as speakers at conferences hosted by non-Federal entities (official or unofficial capacity) (Jan 10, 1994)

90 x 1 – Federal employees as speakers at luncheons or symposia hosted by non-Federal entities (Jan 24, 1990)

88 x 10 – Federal employees as speakers at conferences hosted by for-profit non-Federal entities (Jun 16, 1988)

DAEOgram 07-047, Widely Attended Gatherings (Dec 5, 2007)

Agency Memos/Opinions/Papers on Conference Issues

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

Department of Health and Human Services: Departmental Policy on Use of Appropriated Funds for Food at HHS-Sponsored Conferences (July 26, 2005)

May 2010

- Environmental Protection Agency: EPA Ethics Advisory 96-15 (Aug 17, 1996)
- Department of Commerce: Use of Appropriated Funds to Purchase Food for Non-Federal Attendees at Agency-Sponsored Conferences (Apr 2, 2008)
- DoD (Memo from Deputy Secretary of Defense): Payment of Fees for Guest Speakers, Lecturers, and Panelists (3 Apr 07)
- DoD (Memo from Under Secretary of Defense): Collection and Retention of Conference Fees from Non-Federal Sources (12 Feb 07)
- DoD (Memo from the Office of General Counsel): Use of Appropriated Funds to Purchase Food at Conferences, Meetings, and Events (1 Sep 05)
- DoD Standards of Conduct Office (SOCO) Advisory 09-03: Determining Reasonable Costs and Incidental Support (23 Mar 09)
- Navy: Memo from Commander, Navy Installations on the Use of Appropriated Funds for Light Refreshments and Conference Fees (3 Sep 04)
- Army (Memo from Administrative Assistant to the Secretary): Use of Appropriated Funds to Purchase Light Refreshments at Conferences (6 Mar 03)
- Army (JAG School): Conference Sponsorship and Conference Planning—Relevant Ethics and Fiscal Issues (July 2009)
- Army (JAG School): Relations with Non-Federal Entities, Official and Personal (July 2009)
- Air Force (Chief of Staff Memo): Logistical Support for Professional Military Associations (30 Jan 2006)
- Air Force (SAF/GC/GCA): Logistical Support for Professional Military Associations (16 Nov 05)
- Air Force (SAF/GC): Professional Military Associations as “Prohibited Sources” (21 Nov 05) (addresses level of logistical support that Air Force may provide to them)
- Air Force (SAF/GCA): Participation by Air Force Personnel in Events Sponsored by Defense Contractors (7 Mar 08)
- Air Force (Memo from SAF/GCA): GAO and DoD GC Opinions on Conference Fees and Providing Food at Conferences (5 Oct 05)
- Air Force (HQ USAF/JAG Memo): Co-sponsorship of conference with for-profit organization (22 Feb 99)
- OpJAGAF 2001/7: Acceptance of Prize in Contest at Conference of Non-Federal Organization (Feb 15, 2001)
- OpJAGAF 1996/178: Request for Air Force Sponsorship (21 Nov 96)

May 2010

OpJAGAF 1995/74 (references prior version of co-sponsorship provision, found at para. 3-208):
Association of Modeling, Planning and Simulation (AMPS) Symposium (14 Sep 95)

OpJAGAF 1994/18 (references prior version of co-sponsorship provision, found at para. 3-208):
MIT-USAF Joint Sponsorship of Seminar-Dinner (25 Feb 94)

OpJAGAF 1993/119 (references prior version of co-sponsorship provision, found at para. 3-208):
Air Force and a Private Association Sponsoring a Seminar Series (15 Dec 93)

OpJAGAF 1993/110 (references prior version of co-sponsorship provision, found at para. 3-208):
Agreement with Private Association for Support of AF Conference (15 Nov 93)

Air Force: Decision Table for Analyzing Whether Prizes Won at Conferences May be Accepted
(undated)

Air Force (AFMC): Propriety of Official Travel (8 Mar 10)

Air Force (AFMC): Point Paper on a DoD Organization and a Non-Federal Organization Co-Sponsoring a Conference (22 Oct 09)

Air Force (AFMC): Point Paper on Support for Conferences Involving Non-Federal Organizations
(30 Jan 09)

Air Force (AFMC): Information Paper on Conferences (10 Sep 08)

Air Force (AFMC): Information Paper on Providing a Speaker to a Conference or Other Event
Sponsored by a Non-Federal Organization (16 Nov 06)

Air Force (AFMC): Information Paper on Co-Sponsorships under Joint Ethics Regulation para.
3-206 (undated)