




UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

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TO: All Departmental Chief Financial Officers

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For Administration

SUBJECT: Effective Immediately -- New Legal Guidance Regarding
the Use of Appropriated Funds to Purchase Food for Non-Federal
Attendees at Agency-Sponsored Conferences

Effective immediately, appropriated funds may not be used to purchase food for non-Federal attendees at agency-sponsored conferences. This guidance supersedes the Department of Commerce Policy Regarding the Use of Appropriated Funds for Food at Formal Government Sponsored Conferences, issued on March 6, 2006.

There is a general prohibition against the use of appropriated funds for subsistence (i.e. food) at meetings. 31 U.S.C. Sec. 1345. In 2005, the Comptroller General (CG), in *National Institutes of Health – Food at Government-Sponsored Conferences*, opined that the Government could pay for light refreshments at Government-sponsored conferences because, among other things, “formal conferences” are not “meetings” under 31 U.S.C. Sec. 1345. B-300826 (Mar. 3, 2005). The Department established its food policy, allowing such refreshments, based on criteria set forth in the opinion. However, an opinion recently published by the Department of Justice disagreed and concluded that agency-sponsored conferences are “meetings” for purposes of 31 U.S.C. Sec. 1345, and that light refreshments and meals at such meetings, constitute “subsistence expenses,” and are therefore prohibited under that section. Because Executive Agencies are bound by that opinion, the Department can no longer sanction such expenditures.

An agency may have food available at its conference by entering into a no-cost contract with a conference planner who can collect registration fees from participants to cover the expense of the food. In addition, if the event is being held with a non-profit partner, there may be alternatives which can be discussed with us. This in no way affects your agency’s ability to pay for food for employees at certain events, such as training, conferences, award ceremonies, and cultural awareness programs, or while an employee is on official travel, as discussed below.

Training

The Government Employees Training Act, 5 U.S.C. § 4109, allows agencies to pay or reimburse an employee for the necessary expenses incident to an authorized training program. The Government can provide meals if the agency determines that the meal is necessary to achieve the objectives of the training program. 50 Comp. Gen. 610 (1971).

In order to meet this exception, the training must constitute a course of study under the statute, *and* the provision of the food must be necessary for the employees to obtain the full benefit of the training (i.e. the training is continuing while the food is served).

Government Employees at Outside Conferences

Title 5 U.S.C. § 4110 authorizes payment or reimbursement for government employees conference or meeting attendance and registration fees including non-separable charges for costs of meals if: (1) the meals and refreshments are incidental to the meeting or conference; (2) attendance at the meal or when refreshments are served is necessary to obtain the full benefit of the conference; and (3) the meals and refreshments are part of a formal conference or meeting that includes not just the meals and refreshments, but substantial functions separate from when the food is served.¹ This exception does not apply to purely internal business meetings. 58 Comp. Gen. 604 (1989); 68 Comp. Gen. 606 (1989). Although the criteria are similar to the training exception, this authority should only be used for events that do not meet the criteria set forth for training.

Award Ceremonies

Appropriated funds may also be used to purchase refreshments for award ceremonies honoring recipients under the Government Employees' Incentive Awards Act. Title 5 U.S.C. § 4503 authorizes an agency head to pay a cash award to, and "incur necessary expense for the honorary recognition of employees" who meet general criteria specified in the Government Employees' Incentive Awards Act. Because an awards ceremony is a proper and, perhaps, integral part of an agency's Employee Incentive Awards program, if an agency determines that a reception with light refreshments would materially enhance the effectiveness of its award ceremonies, the cost of the refreshments may be considered a necessary expense for purposes of 5 U.S.C. § 4503. 65 Comp. Gen. 738 (1986). This authority only allows for light refreshments, not full meals.

Cultural Awareness Programs

The Department celebrates a series of heritage commemorative months by instituting programs in which employees may participate. These programs are appropriate under Equal Employment Opportunity Commission regulations, and current law allows appropriated funds to be spent for some aspects of commemorative programs. 60 Comp. Gen. 303, 306 (1981). Therefore, you can pay for ethnic food samples, plates and cutlery as part of a commemorative ethnic heritage program. However, there are a number of restrictions on these samples: they cannot be intended as meals or refreshments; they must be served as part of a formal ethnic awareness program; and the size of the portion must be small enough to show that the food is not being provided as a meal or snack

Travel

¹ A formal conference or meeting is defined as having a registration, published substantive agenda, and scheduled speakers.

When Federal employees are traveling on official business away from their duty station, they are entitled to travel and subsistence costs consistent with the amounts prescribed under the Federal Travel Regulations. See 5 U.S.C. Sec. 5702; 41 C.F.R. 301-11. Meals may be provided to Federal employees during a conference attended while on travel orders, as a convenience to the employees; however, the employees' Meals and Incidentals Expense (M&IE) must be adjusted for meals provided to the employees by following the method in 41 C.F.R. 301-11.18.

We will be conducting briefings in the coming months on this topic. Should you need assistance in the interim in determining what option is best for your agency's conference, please do not hesitate to contact the General Law Division at (202) 482-5391.