

August 17, 1996

EPA ETHICS ADVISORY 96-15

SUBJECT: Guidance on Co-Sponsoring Conferences

FROM: Scott C. Fulton
Principal Deputy General Counsel
Designated Agency Ethics Official (2311)

TO: Deputy Ethics Officials

This Ethics Advisory transmits a memorandum dated March 20, 1995 from Jack M. Kress, the Designated Agency Ethics Official of the Department of Health and Human Services (HHS), which addresses legal and ethical issues that arise in connection with co-sponsored conferences. Conferences which are jointly sponsored by EPA and outside entities are increasingly frequent events, and EPA employees who organize such conferences should be familiar with the principles discussed in the HHS memorandum. Although this Ethics Advisory provides a condensed summary of the HHS memorandum, it is important to read the entire memorandum for a fuller understanding of the issues involved.

In addition, this Ethics Advisory supplements the information in the HHS memorandum about appropriations aspects of jointly sponsored conferences, particularly where EPA co-sponsorship is carried out under EPA assistance agreements. In addition, employees should consult EPA Comptroller Policy Announcements for further information that might relate to conferences.

Highlights of the HHS memorandum include the following:

Definition of "Co-Sponsorship"

"Co-sponsorship" occurs when EPA and another entity which shares a mutual interest in the subject matter of the conference jointly develop a conference or similar event related to EPA's mission.

Basic Principles

- * Avoid the appearance of EPA endorsement of the policies, activities, or products of the co-sponsor.
- * Avoid the appearance that the co-sponsor's support will improperly influence EPA decisions.
- * Adhere to restrictions on use of appropriated funds and other requirements of appropriations law.

Difference Between Co-sponsorship and Endorsement

Subpart G of the "Standards of Ethical Conduct for Employees of the Executive Branch" general prohibits endorsement of "any product, service or enterprise." Although co-sponsorship necessarily and properly implies approval of the co-sponsor's activities in connection with the conference, co-sponsorship does not in itself constitute an improper endorsement. However, it is important to avoid language which implies endorsement of the organization generally.

Legal Requirements

- * No "funds only" co-sponsorships. Co-sponsorships improperly augment EPA appropriations where the other party contributes only funds, logistical services, or other material support but does not participate in developing the program.
- * Mutual interest. For the same reason, co-sponsors must have a demonstrable substantive interest in the subject matter of the event.
- * Fees. Generally, registration fees collected by EPA must be deposited in the Treasury as miscellaneous receipts as required by 31 U.S.C. §3302. However, the co-sponsor may collect fees to cover its share of expenses. In appropriate cases, assistance recipients may retain and use conference fees as "program income."
- * Free attendance for EPA employees. Questions about free attendance for EPA employees (e.g.; how many? for how long?) should be addressed in the co-sponsorship

agreement. Otherwise, individual offers of free attendance are handled under the gift acceptance rules at 5 C.F.R. Part 2635, Subpart B (if local), or the travel acceptance rules at 41 C.F.R. Part 304.1 (if conference is more than 50 miles from duty station). See EPA Ethics Advisory 92-26 of December 24, 1992.

* EPA property and services. EPA supplies, penalty envelopes, other property, and personnel resources may not be provided to the non-Federal co-sponsor other than to assist in the development or presentation of the co-sponsored event. See 5 C.F.R. Part 2635, Subpart G, "Misuse of Position."

* Co-sponsors' independent events. If a co-sponsor is independently responsible for a discrete portion of the event (for example, a reception), EPA staff should not assist the co-sponsor in planning or organizing this event except to the extent necessary to coordinate the overall program. In addition, EPA property or facilities should not be used for this purpose. However, informational materials about the overall conference may include information about the co-sponsor's independent activity. See 5 C.F.R. Part 2635, Subpart G, "Misuse of Position."

* Fundraising. EPA should not assist in fundraising for the sponsor's share of the event. See 5 C.F.R. Part 2635, Subpart G, "Misuse of Position."

* Events Solely for Government Employees. To avoid improper augmentation of appropriations, EPA should not co-sponsor events which will be attended only by Government employees. Additionally, EPA financial assistance cannot be used to support conferences that have a principal purpose of providing services for the direct benefit and use of the Federal Government.

* Food and Refreshments for EPA Employees. EPA may not use appropriated funds for food and refreshments for EPA employees attending co-sponsored events at their official duty stations except as authorized by the

Government Employees' Training Act at 5 U.S.C. §4101 et seq.(Footnote 1)

* Food and Refreshments for Non-Federal Attendees. EPA may not use appropriated funds for food and refreshments for non-Federal attendees unless (1) the recipient is participating as a speaker in an training event pursuant to 5 U.S.C. §4101 et seq., (2) the recipient is providing a direct service to EPA and has received "invitational travel orders" under 5 U.S.C. §5703 (in which case other travel expenses may also be paid); or (3) the Administrator's "reception and representation" fund is used.

* Social Events. EPA may not co-sponsor an event that is primarily social in nature. However, EPA may co-sponsor an event that has a social component (such as a modest reception), so long as the event has a primarily educational or informational purpose that is related to EPA's mission. Further, EPA assistance funds cannot be used for events that have a primary purpose of entertaining conference participants.

* Travel Costs. See EPA Resources Management Directive 2550B, Travel Manual, Appendix Part 1-4, Authorization of Travel.

* Anti-Lobbying Act. Since appropriated funds are being used to support EPA co-sponsored conferences, the Anti-Lobbying Act of 1919 at 18 U.S.C. § 1913 is applicable. Although information regarding the substance of pending legislation can be a part of conference agendas, the conference cannot be a forum for encouraging a "grassroots" lobbying campaign to influence Congress.

Additional Guidance

* Written Agreements. Agreements for co-sponsorships should be in writing; e.g., a "Memorandum of Understanding" or an exchange of letters.

* "Prohibited Source" Co-Sponsorships Create Special Concerns. Where a proposed co-sponsor is a "prohibited source" (that is, it has or seeks EPA contracts or

assistance agreements, seeks action by EPA, or is regulated by EPA; see 5 C.F.R. §2635.203(d)), we must weigh the importance to EPA of the co-sponsorship against the concern about loss of impartiality. See guidance on pages 7 and 8 of the HHS memorandum. Such determinations should be discussed with an appropriate Deputy Ethics Official or with the Designated Agency Ethics Official or Alternate Agency Ethics Official. Before agreeing to co-sponsor an event with an entity that is created solely for that purpose, we should make sure that the new entity is not merely a vehicle for entities that would be inappropriate co-sponsors themselves.

* Fundraising by Co-Sponsor. Where a co-sponsor intends to solicit funds from other sources for its share of costs, EPA should receive assurance that: (1) the solicitation will make clear that the requester is the co-sponsor, not EPA; (2) the co-sponsor will not imply that EPA endorses any fundraising activities; and (3) any gifts will be used solely for the co-sponsor's share of the expenses, not EPA's.

* Commercial Events. EPA should not co-sponsor a profit-making endeavor or an event which is primarily for the purpose of promoting or selling the co-sponsor's products or services. Fees charged to attendees should be sufficient to cover the co-sponsor's share--but no more.

* Event Publicity. A co-sponsor's publicity should not imply that EPA co-sponsorship is an endorsement of the co-sponsor's general policies, activities, or products. The co-sponsor should not mention the fact of EPA co-sponsorship except in connection with factual publicity for the event (i.e., dates, times, locations, purposes, agendas, fees, and speakers).

* Seeking Qualified Co-Sponsors. Although EPA may actively seek out prospective co-sponsors, it is important to avoid:

Appearance of Coercion--that is, creating the reasonable impression that EPA is coercing an outside

entity to become a co-sponsor. Great care should be exercised in approaching "prohibited sources," and the concerns discussed in the "Prohibited Source Co-Sponsorships * * *" paragraph above should be resolved in advance. In addition, employees who participate substantially in matters affecting the prospective co-sponsor should not be the ones to approach the entity regarding co-sponsorship.

Appearance of Favoritism. To avoid creating the appearance that EPA is favoring certain entities, we should, where practicable, inform all similarly situated entities of the opportunity for co-sponsorship. We should be able to explain why we chose a particular co-sponsor over another.

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Please call me at (202) 260-8064 or call Don Nantkes or Hale Hawbecker at (202) 260-4550 if you have any questions.

Attachment

cc: Office of Government Ethics

(Footnote 1) For 5 U.S.C. §4101 to authorize the use of appropriated funds, a determination must be made that:

- a. The lunches and breaks are incidental to the conference;
- b. Attendance at the lunches and breaks is necessary for full participation in the conference; and
- c. Federal employees attending the conference would miss essential formal discussions, lectures or speeches concerning the purpose of the Conference if they took meals and breaks elsewhere.