NIH Policy Manual

1160-1 - Food and Beverage; Entertainment

Issuing Office: OD/OM/OFM **Phone:** (301) 443-3184

Release Date: 3/03/2016 ? **Technical Revision Date:** 9/20/2022 ?

Transmittal Notice

1. **Explanation of Material Transmitted:** This manual chapter has been rewritten to comply with Office of Management and Budget (OMB) Memorandum M-11-35 Eliminating Excess Conference Spending and Promoting Efficiency in Government, Executive Order 13576 on Delivering an Efficient, Effective, and Accountable Government, Executive Order 13589 on Promoting Efficient Spending, Department of Health and Human Services (HHS) Policy on Promoting Efficient Spending, January 3, 2012, and National Institutes of Health (NIH) Guidance Related to the HHS Policies on Promoting Efficient Spending, January 30, 2012.

   Changes to policy include:

   - A new definition of "food and beverage" (which includes light refreshments, meals, and snacks) and a more limited definition of "entertainment" which includes music, live artistic performances, and similar activities (see Section E. Definitions).
   - A **Rescission** of the prior waiver policy that allowed for the purchase of food using appropriated funds if the conditions expressed in the prior version of the policy were met and if the use of the funds was approved by the OpDiv or StaffDiv Head. The statutory exceptions still apply. (See Section C.1.b)
   - A **Rescission** of the prior exception allowing the use of gift funds for recruitment meals.

2. **Filing Instructions:**

Remove: Manual Issuance 1160-1, Rescission dated 4/18/12
Insert: Manual Issuance 1160-1, dated 03/03/16

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Division of Management Support, OMA on 301-496-2832, or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx.

A. Purpose

This chapter provides information on policies and procedures governing the use of appropriated funds and gift funds, for the purchase of food and beverage (including light refreshments, meals, and snacks) and entertainment, as defined in Section E. below.

The provisions of this policy apply to all NIH Institutes and Centers (ICs) and OD Offices, herein referred to as ICOs.

B. Background

The Department of Health and Human Services (HHS) developed revised policies on the use of appropriated funds for conference and meeting space, food, extraneous promotional items, and printing and publications and issued the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meetings, Food, Promotional Items, and Printing and Publication" effective January 3, 2012. This policy supports the Executive Order on Promoting Efficient Spending (EO 13589); the Executive Order on Delivering an Efficient, Effective, and Accountable Government (EO 13576); and Office of Management and Budget (OMB) Memorandum M-35-11, Eliminating Excess Conference Spending and Promoting Efficiency in Government; and is based on legal opinions from the Department of Justice and HHS Office of the General Counsel (OGC). This new policy promotes the commitment of HHS to comply with appropriations law and act in a fiscally responsible manner, by minimizing administrative costs to perform mission critical functions in the most efficient, cost effective way. NIH issued "NIH Guidance Related to the HHS Policies on Promoting Efficient Spending" to comply with HHS policy and to promote the commitment of NIH to comply with applicable laws and regulations and to act in a fiscally responsible manner.

The policy in this manual chapter provides additional NIH guidance with regard to the purchase of food and beverage, and the purchase of entertainment.

C. Policy

1. **Food and Beverage**

    a. **General Policy**
    It is the intent of the NIH to maximize the use of resources for research. Therefore, expenditure of funds for food and beverage will be limited to those activities clearly in support of the goals and objectives of NIH and as authorized by this policy. Documentation of the correct usage of funds for food and beverage and/or entertainment is necessary. ICOs shall appoint someone with overall responsibility for understanding the policy and for developing ICO specific policies and procedures to ensure that public funds (whether from direct annual appropriations, multi-year appropriations, appropriated user fees, mandatory appropriations, royalties, gift funds, or reimbursements from such

appropriations, etc.) are expended for food and beverage only as permitted by NIH policy.

It is the policy of NIH that ICOs shall not use public funds (whether from direct annual appropriations, multi-year appropriations, appropriated user fees, mandatory appropriations, royalties, gift funds, or reimbursements from such appropriations, etc.) to purchase food and beverage (whether for conferences or meetings; for light refreshments, meals, or snacks; or for Federal or non-Federal participants) unless the ICO can document (a) that the provision of food and beverage is a necessary expense[1] and (b) one of the four established exceptions listed below applies.

Note that this Manual Chapter applies to the provision of food and beverage, whether it is only food, or only beverages, or both that is to be provided. There is no separate exception for providing solely beverages at meetings and conferences.

Absent approval under one of the exceptions described below, the prohibition on paying for food and beverage applies regardless of whether the event is a conference or meeting or whether the event is held in federal or non-federal facilities.

The list of four established exceptions for the purchase of food and beverage remains unchanged from the prior version of this chapter. However, the exceptions have been further clarified in this updated chapter in that the **former** waiver process – which previously allowed for the purchase of food using appropriated funds if the conditions expressed in the prior version were met and if approved by the OPDIV or STAFFDIV Head – **HAS BEEN RESCINDED**.

b. **Exceptions**

The four exceptions to the general policy are as follows:

1. **Training Events**

   ICOs are authorized to pay for government employees' attendance at a non-HHS government or non-government conference (if the conference is an authorized employee training program) that includes food and beverage, if the registration fee includes the cost of food and beverage and the cost of food and beverage cannot be separated from the registration fee. However, ICOs shall not use appropriated funds for the purchase of food and beverage for HHS funded training events, such as conferences, workshops, symposia, and meetings, authorized under the Government Employee Training Act, 5 United States Code (U.S.C.) Chapter 41. Whenever food and beverage are paid for as part of the registration fee any per diem due to the employee should be reduced accordingly.
2. **Award Ceremonies**

The Government Employees' Incentive Awards Act (GEIAA), 5 United States Code (U.S.C.) chapter 45, and HHS Policy on Promoting Efficient Spending, January 3, 2012, Attachment 2 authorizes the use of appropriated funds to provide refreshments, such as snacks and beverages, at federal employees' awards ceremonies when it has been determined that such refreshments would materially enhance the awards ceremony in furtherance of the objectives of the awards. However, awards ceremonies must emphasize public recognition of the employees' performance and allow other employees to honor and congratulate their colleagues. Therefore, the ceremonies cannot be limited to the employees actually receiving the awards.

In addition, the GEIAA authorization for the use of appropriated funds to purchase refreshments is for ceremonies honoring federal employees, which in the context of GEIAA are defined as civil servants. Thus, for example, if none of the individuals receiving an award is a civil servant, GEIAA does not provide authorization to purchase refreshments at the ceremony. If those receiving awards are a mix of federal employees and non-federal employees, the authorization to use appropriated funds to purchase refreshments may apply. In the case of such a mix of awardees it is important for NIH to consider the fact that Comptroller General Decisions have considered food expenses for only a low number of non-federal attendees.

Furthermore GAO has noted that, in order for the purchase of refreshments with appropriated funds to be authorized under GEIAA, the primary purpose of the agency function should be to distribute awards and recognize employees. Thus, if the overall circumstances indicate that the award ceremony is incidental to another event and may appear to be merely a method for using appropriated funds to pay for refreshments at an otherwise non-excepted event, the GEIAA authorization would not apply.

3. **Representation Fund**

   NIH Representation Funds are budget allocations to the Director, NIH that are specifically authorized by appropriation to facilitate official reception and representation activities that further the interests of the NIH. The funds may be used to purchase food and beverage for official reception and representation activities and their use must be approved by the Director of NIH. Note –this is a very narrow exception, and has very limited applicability at NIH. Questions on the use of these very limited funds should be directed to the NIH Office of the Director (OD), Office of Budget (OB).

4. **Emergencies**

   There is a limited exception for extreme emergencies involving imminent

danger to human life or the destruction of federal property. This exception, however, is available only in rare situations and is heavily dependent on the facts presented in a particular situation.

The Comptroller General (Comp. Gen.) has denied numerous requests for payments for meals when employees were working on 24 hour shifts, e.g. B-272985. In decision B-177900, Aug 2, 1973, 53 Comp. Gen. 71 the Comptroller General said that payment for employee's meals depends on the facts and circumstances present in each case. Although "work in occupations such as those of policeman, fireman, security guards, etc. is often required to be performed under emergent and dangerous conditions and that such fact alone does not warrant departure from the general rule against payment for employee's meals from appropriated funds."

Consequently, NIH cannot make a blanket determination prior to any emergency event. Employees should be aware of this when making personal expenditures for food and beverage during an emergency because such expenditures may not be eligible for reimbursement by the government.

c. **Additional Clarifications**

1. **Gift Funds**

NIH has been granted statutory authority to accept, retain, and use gift funds. "Although donated funds may not be subject to all the restrictions applicable to direct appropriations they are still public funds", B-274855. NIH may use gift funds to purchase food and beverage if the approving official determines that the purchase of food and beverage: (a) carries out the NIH mission; (b) satisfies the conditions of the gift; (c) is consistent with NIH policy on gifts; and (d) is a necessary expense. The Recommending official role/responsibility will be at the ICO Executive Officer (EO) level and cannot be further re-delegated.

In considering whether an expenditure is a necessary expense it is important to remember that an expenditure should be more than merely desirable or even important to be approved under the necessary expense doctrine. In addition, an expenditure should not be approved simply because it is considered a good idea or because it is similar to a practice engaged in by private businesses.

When determining whether to use gift funds for food and beverage, sponsoring ICOs should carefully consider the donor's expectation on how the gift funds would be utilized. Many donors might not expect that their gifts are to be used for food and beverage for meetings, rather, to directly benefit research. Before such funds are used, planners and approving

officials need to take into account that sensitivity and recognize that use of these funds for food and beverage, above exceptions notwithstanding, will likely be the subject of increased external scrutiny. The determination to use gift funds should be done on a case by case basis. Questions regarding the donor's expectations should be directed to the HHS, OGC, Public Health Division.

There is no exception for the use of gift funds to provide recruitment meals.

2. **Royalties**

   NIH has been granted statutory authority to collect, retain and use royalties under 15 U.S.C. 3710c. Royalties are considered permanently appropriated funds and all of the rules and regulations that apply to the use of appropriated funds for food and beverage, as well as entertainment, apply to royalties.

3. **Registration Fees**

   NIH has been granted statutory authority to charge a fee for certain programs and activities. However, NIH may not operate beyond the level that can be paid for by its appropriations. Nor can NIH circumvent appropriation limitations by augmenting its appropriations from sources outside the government. Therefore, any registration fees collected for conferences must be directly related to that conference. Registration fees collected by the agency cannot be used to acquire food and beverage for NIH sponsored conferences/meetings.

4. **Combined Federal Campaign (CFC) Events**

   On March 28, 2012 the Office of Personnel Management (OPM) issued a directive prohibiting the approval of costs incurred for food, beverages or entertainment in relation to CFC events. CFC events are not considered exceptions to the policy.

5. **Free Food and Beverage**

   Given the policy set forth by HHS, and unless one of the exceptions applies, NIH solicitations, funding opportunity announcements, contracts (such as event management and logistical support contracts), purchase orders, grants, and agreements for conferences or meeting space must specifically prohibit the provision of food and beverage (including light refreshments and meals) and state that these items are not to be provided and are an unallowable expense. In effect, when acquiring space to conduct conferences or meetings, ICOs may not accept food even if the space is offered at the same price as it was without food and beverage.

6. **NIH Peer Review**

NIH peer review meetings are subject to this policy regarding provision of food and beverage. Alternative Solutions/Options for providing sustenance to peer reviewers during lunch/coffee breaks could include: securing hotels that have restaurants nearby; utilizing in-house hotel restaurants; and food stands to provide food and beverage at reviewers' personal expense.

7. **Approvals**

   If the food and beverage is part of an NIH sponsored, co-sponsored, or hosted conference or meeting, the ICO Executive Officer (EO) must include the signed NIH Form 2408-1 as part of the overall "Request for Conference Approval" package and that package must be sent through the appropriate levels of review and approval in accordance with the most recent HHS Policy on Conference Spending.

   For food and beverage that is not part of an NIH sponsored, co-sponsored, or hosted conference or meeting, the ICO EO must sign the NIH Form 2408-1 as the requestor then route the form to the Office of Financial Management (OFM) Travel Mailbox for Deputy Director for Management (DDM) review and approval prior to the obligation of funds for food and beverage and/or entertainment, regardless of the amount being planned.

2. **Entertainment**

   All policies that apply to the purchase of food and beverage apply to the purchase of entertainment, including any necessary approvals.

   There are almost no situations where entertainment (e.g., live music) would be authorized for federal employees.

3. **Food and Beverage or Entertainment for Non-Government Personnel**

   According to the *Principles of Federal Appropriations Law* Chapter 4, C., 5., d., "Just as the entertainment of government personnel is generally unauthorized, the entertainment of nongovernment personnel is equally impermissible. The basic rule is the same regardless of who is being fed or entertained: Appropriated funds are not available for entertainment, including free food, except under specific statutory authority."

   Two of the most frequently cited decisions are 5 Comp. Gen. 455 (1925) and 26 Comp. Gen. 281 (1946). In the first decision expenditures by two Army officers for entertaining officials of foreign governments while making travel arrangements were disallowed and in the second decision appropriations were not available for dinners and lunches for distinguished guests of a commissioner of the Philippine War Damage Commission. The decisions in these cases are still valid. They have not been superseded by more recent decisions.

4. **Classification of Expenditures**

   Procurements of food and beverage and/or entertainment services in accordance with this manual chapter shall reflect sub object class 25.2X.

   Food and beverage and/or entertainment services procured in connection with Official Reception and Representation Funds, earmarked in the HHS/Labor Appropriations Bill, allowed by statute, and allocated to the Director, NIH, shall reflect sub object class 25.2C.

   Although not within the scope of this Manual Chapter, it should be noted that services procured in connection with the purchase of food and beverage for patients participating in a clinical or research protocol, or for voluntary health procedures, shall reflect sub object class 26.61.

[1] **Necessary Expense Rule**: See GAO's Principles of Federal Appropriations Law, 4-19, for additional information. Additionally, when applying the necessary expense rule, an expenditure may be justified after meeting a three-part test:

a. The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available.
b. The expenditure must not be prohibited by law.
c. The expenditure must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.

D. References

1. 42 U.S.C. 238 and 42 U.S.C. 284
2. HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting, Food, Promotional Items, and Printing and Publications, January 3, 2012, Ellen G. Murray, ASFR: https://oamp.od.nih.gov/sites/default/files/ContractToolbox/HHSEffSpndgPlcy010312_508.pdf
3. Executive Order on Promoting Efficient Spending, EO 13589: https://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending
4. Executive Order on Delivering and Effective, Efficient, and Accountable Government, EO 13576: https://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov
5. OMB Memorandum on Eliminating Excess Conference Spending and Promoting Efficiency in Government, M-11-35:https://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-35.pdf

6. OMB Memorandum on Promoting Efficient Spending to support Agency Operations M-12-12: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-12_0.pdf
7. Office of Legal Counsel, DOJ, "Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences," April 5, 2007:http://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/05/29/op-olc-v031-p0054.pdf
8. OPM MEMORANDUM FOR LOCAL FEDERAL COORDINATING COMMITTEES AND PRINCIPAL COMBINED FUND ORGANIZATIONS, Directive Prohibiting the Approval of Costs Incurred for Meals and/or Entertainment, March 28, 2012: https://www.opm.gov/combined-federal-campaign/reference-materials/defense-directive/meals-entertainment-directive.pdf
9. NIH Form 2408-1 - Request for Use of Appropriated Funds/Gift Funds for Food and Beverage and Other Entertainment Expenses:https://oma.od.nih.gov/Lists/DMSFormsList/Attachments/442/NH2408-1.pdf
10. NIH Manual 1135 - Gifts Administration, as updated
11. NIH Manual 1743 – Keeping and Destroying Records, as updated

E. Definitions

(as used in this manual chapter)

Conference **-** A meeting, retreat, seminar, symposium or event that involves attendee travel. The term "conference" also applies to training activities that are considered to be conferences under 5 Code of Federal Regulations (CFR) 410.404.

Food and beverage - solids and/or liquids for human consumption, either as light refreshments, meals, snacks (for example, at morning or afternoon breaks) or otherwise. The term "food and beverage" includes, but is not limited to, food products such as bagels, chips, cookies, donuts, or fruit, and/or liquid beverages such as bottled water, coffee, juice, milk, soda, soft drinks, or tea. For purposes of this manual chapter, the term "food and beverage" does not include freely available tap water.

Entertainment **-** music, live or recorded, live artistic performances, and similar activities. The term includes all costs associated with these activities and events.

Gift(s) – a voluntarily transfer by one person or entity to another without compensation. Under NIH policy, a *conditional* gift is a gift in which the donor imposes some condition or restriction on its use or as a condition to be met in order to obtain it. An *unconditional* gift is a gift in which the donor imposes no condition or restriction on its use and no conditions to be met in order to obtain it. For further description of gifts to NIH, see Manual Chapter 1135.

ICO **-** an NIH organizational term referencing the national research institutes, national centers, Office of the Director offices, and the National Library of Medicine.

Meeting – a gathering of people for a specific purpose.

F. Responsibilities

1. IC Directors/Deputy Directors or OD Office Directors - oversight responsibility for reviewing and monitoring the use of all funds for food and beverage and/or entertainment.

2. ICO Executive Officers - request all use of funds for the purchase of food and beverage and/or entertainment under the exceptions. ICOs may opt to retain this authority at a higher level.

3. Office of Financial Management (OFM) – review requests for completeness and proper authorization and then obligate funds for official food and beverage and/or entertainment expenditures submitted on a SF 1034.

4. Deputy Director for Management (DDM) - reviewing and approving/denying all requests for the use of funds for the purchase of food and beverage and/or entertainment.

5. Purchase Card Holders - adhere to the requirements on the use of Purchase Cards in the HHS Purchase Card Guide, Version 6 dated 7/2/2010 and the NIH Purchase Card Supplement Version 6.0. Retain approval memorandums for the purchase of food and beverage and/or entertainment in the associated administrative file.

6. Contracting personnel - follow contracting regulations. Retain approval memorandums for the purchase of food and beverage and/or entertainment in the associated contract or administrative file.

7. Purchasing ICO - Complete and submit the Form NIH 2408-1, "Request for Use of Appropriated Funds/Gift Funds for Food and Beverage and Other Entertainment Expenses" for approval, and ensure the form is approved prior to the obligation of any funds.

G. Procedures

1. Purchasing ICO completes NIH Form 2408-1 and obtains ICO Executive Officer signature as the requestor.
2. Purchasing ICO submits the completed and signed 2408-1 to the OFM Travel Mailbox (ofmtravel@od.nih.gov) for review and approval/denial by DDM.
3. After review and approval by DDM purchasing ICO obligates funds through appropriate means, i.e. contract, SF-1034, purchase card, etc.
4. Purchasing ICO receives goods and/or services. Payments shall not be made until goods and/or services are actually received and accepted by the purchasing organization.
5. Purchasing ICO requests payment through appropriate mechanism:

    a. SF-1034 "Public Voucher for Purchases and Services Other than Personal"

b. Purchase Cards;
c. Grants;
d. Contract mechanisms, e.g., Purchase Order, Contract, etc.

6. The properly completed and signed NIH Form 2408-1 must accompany each request for payment and a copy of the 2408-1 must be maintained in the official procurement files of the ICO.
7. Requests for payments for purchases made via SF-1034 must be submitted to the OFM Government Accounts Office for payment. The request should include a copy of the approved SF-1034, the approved NIH Form 2408-1 and invoices or receipts for the payment requested.

H. Records Retention and Disposal

The contracting officer, grants management officer, and/or purchase card holder must retain the approved memorandum for the purchase of food and beverage and/or entertainment in the associated administrative file (e.g. contract file, etc.).

All records pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743,"Keeping and Destroying Records," Appendix 1, "NIH Records Control Schedules" (as amended). These records must be maintained in accordance with current NIH Records Management and Federal Guidelines. Contact your IC Records Liaison or the NIH Records Officer for additional information.

I. Internal Controls

The purpose of this manual issuance is to provide policies and procedures for the use of appropriated or gift funds for the purchase of food and beverage and/or entertainment.

1. **Office Responsible for Reviewing Internal Controls Relative to this Chapter**: OFM
2. **Frequency of Review (in years):** Annually as part of the A-123 review process.
3. **Method of Review:**

   As part of the A-123 Internal Control review a sample of transactions in OC 25.2X will be selected and the approval memorandum will be requested from the ICO. The memorandum will be reviewed to determine whether the ICO complied with the policy.

   Although the purchase of food and beverage and/or entertainment with appropriated funds is not a high dollar activity it is subject to intense external scrutiny. Due to the interest of external parties this process will be reviewed annually.
4. **Review Reports are sent to:**

   Review reports will be sent to the DDM, and Deputy CFO as part of the A-123 reporting process.

NIH Form 2408-1

NIH Form 2408-1: Request for Use of Appropriated Funds/Gift Funds for Food and Beverage and Other Entertainment Expenses