

FDA Staff Manual Guides, Volume III – General Administration

Procurement and Supply Management

Procurement

Use of Appropriated Funds to Purchase Promotional Items

Effective Date: 01/08/2021

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1. Purpose.

This Staff Manual Guide (SMG) prescribes the Food and Drug Administration (FDA) policy and procedures regarding the use of appropriated funds to purchase promotional items. Additional requirements for the approval of the purchase of promotional items when hosting a conference are contained in SMG 2350.5, Conference Approval and Reporting.

2. Background.

The Department of Health and Human Services (HHS) has issued policies to promote efficient spending with respect to using appropriated funds for conferences, meeting spaces, food, promotional items, printing and publications. These policies promote HHS' commitment to comply with appropriations law and to ensure taxpayer dollars are spent efficiently and wisely, and support the following Executive Orders and policies:

- A. Executive Order on Promoting Efficient Spending
(<https://obamawhitehouse.archives.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending>)
- B. Executive Order on Delivering an Efficient, Effective, and Accountable Government

<https://obamawhitehouse.archives.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>)

- C. Office of Management and Budget (OMB). "Reducing Burden for Federal Agencies by Rescinding and Modifying OMB Memoranda."
(<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-26.pdf>)

3. Reference/Authority.

- A. 42 US Code (USC) 238: Gifts for Benefit of Service
([http://uscode.house.gov/view.xhtml?req=\(title:42%20section:238%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title42-section238\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:42%20section:238%20edition:prelim)%20OR%20(granuleid:USC-prelim-title42-section238)&f=treesort&edition=prelim&num=0&jumpTo=true))
- B. 5 USC Chapter 45: Incentive Awards
(<https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title5-chapter45&edition=prelim>)
- C. 5 USC Chapter 41: Training
(<https://uscode.house.gov/view.xhtml?path=/prelim@title5/part3/subpartC/chapter41&edition=prelim>)
- D. Government Accountability Office (GAO) Principles of Federal Appropriations Law
(<https://www.gao.gov/legal/appropriations-law-decisions/red-book>)
- E. HHS Policy on Promoting Efficient Spending
(<https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html>)
- F. HHS Policy on the Use of Appropriated Funds for Promotional Items
(<https://www.hhs.gov/grants/contracts/contract-policies-regulations/spending-on-promotional-items/index.html>)
- G. HHS Promoting Efficient Conference Spending Policy
(<http://www.hhs.gov/asfr/ogapa/acquisition/policies/promoting-efficient-conference-spending-policy-12-16-2013.html>)

4. Definitions.

- A. **Gifts:** The voluntary transfer of property to another without compensation.
- B. **Promotional Items:** Products that are branded with FDA, Center/ORR/Office or FDA initiative logos that are used for the purposes of promotion of a brand, event, conference, service, product or business line, etc. In addition to a logo,

items should display FDA or Center/ORR/Office-specific contact information such as a telephone number, email address or website. Promotional items include but are not limited to clothing and commemorative items, pens, mugs/cups, folders/folios, lanyards, conference bags, appreciation coins, or challenge coins.

C. **Conference and Conference Training:** 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 CFR 410.404. (See SMG 2350.5, Conference Approval and Reporting for additional descriptions of conference events.)

D. **Meeting (Non-Conference):** Meeting is a deliberation between a quorum of the agency, or between a quorum of the agency and another party, during which agency business or public policy over which the agency has supervision or control is discussed or considered or during which the agency takes formal action. (See SMG 2350.5, Conference Approval and Reporting for additional descriptions of meetings (non-conferences).)

5. Policy.

A. General Policy.

1. FDA employees shall not use appropriated funds (whether from an annual appropriation, multi-year appropriation, appropriated user fee, mandatory appropriation, gift funds, or reimbursements from such appropriations, etc.) to purchase promotional items when they are not a necessary expense.
 - a. All uses of appropriated funds to purchase promotional items, except for promotional items that are purchased for a conference or training (see Section 5.A.5 and Section 5.A.6), must be approved by the corresponding Center/ORR/Office Executive Officer (EO) or delegated authority.
2. Promotional items to be given to individuals are typically considered personal gifts for which appropriated funds may not be expended. However, in certain instances as defined in this policy FDA can purchase certain promotional items if they directly support its mission.
3. Personal items such as food, eating utensils, clothing, toys or sporting equipment normally should not be used as promotional items as they have been considered to be prohibited personal gifts in past decisions of the Comptroller General.
4. **Necessary Expense:** Expenditures that are deemed a necessary expense must meet the following 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; and
 - b. The expenditure must not be prohibited by law; and
 - 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.
5. **Conference and Conference Training Events:** Appropriated funds may be used to pay for promotional items at FDA-funded conferences and conference training events, such as conferences, workshops, symposia, and meetings, authorized under the Government Employee Training Act if the items meet the requirements described in Section 5.A and they are needed so that employees can fully participate in the event. Promotional items that are not necessary to carry out the purpose of the conference or conference training are prohibited.
- a. All uses of appropriated funds to purchase promotional items for conference or conference training events must be approved by the FDA approving officials identified in SMG 2350.5, Conference Approval and Reporting.
6. **Training Events (Non-Conference):** The Government Employees Training Act authorizes the use of appropriated funds to purchase promotional training materials (i.e. pens, paper and notebooks, etc.) if the items are needed so that employees can fully participate in the event. Promotional items that are not necessary to carry out the purpose of the training are prohibited.
- a. All uses of appropriated funds to purchase promotional items for training events (non-conference) must be approved by the Center/ORR/Office EO or designee.
7. **Recruitment:** An agency may purchase informational tokens of nominal value as part of its recruitment effort if authorized by the Center/Office EO. The Center/Office EO may authorize the expenditure of appropriated funds for the purchase of recruitment aids. Center/Office EOs should consider the following when determining to authorize the purchase of recruitment aids:
- a. The items are considered a necessary expense.
 - b. The items are purchased as part of a recruitment effort.

- c. The items contain a recruitment message or information, such as a phone number or website.
 - d. The items are for distribution in places where recruitment efforts are carried out.
 - e. The items are for distribution to potential applicants, not current federal employees.
 - f. The cost of the items is reasonable.
8. **Award Ceremonies:** The Government Employees' Incentive Award Act authorizes the use of appropriated funds to purchase promotional items for FDA employees' awards ceremonies when it has been determined that such promotional items would materially enhance the awards ceremony in furtherance of the objectives of the awards.

NOTE: See SMG 2610.22, Awards Ceremony for additional requirements for hosting an awards ceremony, including requirements pertaining to purchasing promotional items.

9. **Challenge Coins:** Appropriated funds may be used to purchase challenge coins if the challenge coin is used to recognize an FDA employee or non-government employee for individual accomplishments.
- a. All uses of appropriated funds to purchase challenge coins as promotional items must be approved by the Center/ORR/Office EO or designee.
10. **Ordering Standard Items:** Centers/ORR/Offices may submit a consolidated purchase request for recurring purchases occurring in the same fiscal year. These requests should be submitted at the beginning of each fiscal year following the process outlined in Section 6, including the appropriate justification and/or reasonableness of the recurring purchases and Center/ORR/Office EO or designee approval.

B. Documentation Requirements

1. **Approval Documentation:** Before the promotional items may be purchased, the Center/ORR/Office requestor must submit information regarding the purpose, justification as a necessary expense, vendor, quantity of items, and reasonableness of estimated cost to their Center/ORR/Office EO or designee for review and approval/denial.
2. **Documentation Retention:** In addition to existing documentation requirements for agency purchases, the Center/ORR/Office must retain documentation from HHS Purchase Card transactions for a minimum of six

years. For all other purchases using direct obligations, the justification for the purchase and the approval documentation must be uploaded to the Unified Financial Management System (UFMS) when submitting the requisition. Additionally, the Center/ORR/Office must retain any documentation resulting from the purchase, receiving, and distribution of the approved promotional items. Questions regarding document retention should be directed to the responsible FDA Center/ORR/Office Assistant Records Liaison Officer (ARLO).

C. Additional Requirements.

1. Gift Funds: Use of Gift Funds for the purchase of promotional items also requires that the purchase is allowable under the terms and conditions of the gift in addition to the necessary expense requirement. Questions on whether the purchase is allowable under the terms and conditions of the gift should be directed to the FDA Deputy CFO through the CFO Council at the following address: CFOCouncilMailbox@fda.hhs.gov.

6. Procedures.

A. Promotional Items Purchase Request Submission and Approval

1. Center/ORR/Office Staff provide all required purchase request information, then advance it to their Center/ORR/Office EO or designee for review.
2. Center/ORR/Office EO or designee reviews promotional item purchase request to ensure that all required information has been provided, the purchase is a necessary expense, and verifies the reasonableness of the estimated promotional item costs.
3. Center/ORR/Office EO or designee makes the approval/denial decision with respect to the following criteria:
 - a. Promotional item purchase request supports FDA mission.
 - b. Appropriateness of using appropriated funds for the promotional item purchase.
4. Once the Center/ORR/Office EO or designee approves the request, the purchase of the promotional item is completed using an applicable purchase method.

B. Promotional Items Purchase Request Submission and Approval for Conference and Conference Training Events and Awards Ceremonies

1. Center/ORR/Office utilizes the submission and approval procedures described in SMG 2350.5 Conference Approval and Reporting or SMG 2610.22 Awards Ceremony (see Section 5.A.5, Section 5.A.7).

7. Responsibilities.

A. Responsibilities of Center/ORR/Office EO or Designee

1. Reviews and approves or denies all requests for using appropriated funds to purchase promotional items, except for promotional items that are purchased for a conference or training (see Section 5.A.1.a).
2. Ensures Centers/Offices provide proof of purchase request approval that includes justification that promotional item is a necessary expense.
3. Evaluates request to determine if the promotional item purchase is aligned to FDA's mission and represents an appropriate use of Federal funds.
4. Establishes additional approval and reporting requirements for their respective Center/ORR/Office, if deemed necessary.

B. Responsibilities of Center/ORR/Office Staff

1. Submits justification for the purchase of promotional items as a necessary expense.
2. Provides all required information.
3. Maintains documentation for purchased promotional items for audit purposes.

C. Responsibilities for FDA Deputy CFO or Delegated Authority

1. Reviews questions on whether a purchase using gift funds is allowable under the terms and conditions of the gift fund (see Section 5.C.1).

8. Effective Date.

The policy was signed by Sahra Torres-Rivera and is effective as of January 8, 2021.

7. Document History - SMG 2610.21, Use of Appropriated Funds to Purchase Promotional Items

Status (I, R, C)	Date Approved	Location of Change History	Contact	Approving Official
Initial	01/07/2021	N/a	OC/OO/OFBA/OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer, Office of Finance, Budget, and Acquisitions

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