



The Centers for Disease Control and Prevention has developed the “**Development and Execution of Memoranda of Understanding and Memoranda of Agreement**”
Operational Policy.

Summary of Policy: This policy establishes requirements for the development, use, management and maintenance of Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) at CDC. The policy requires that a MOU/MOA:

- Describe in very broad terms, the mutual understandings, concepts, goals and plans shared by the parties
- Be reviewed and approved by the originating CIO Management Officer
- Be signed in accordance with current delegations of authority
- Must not, in and of itself, bind the agency or imply a binding agreement or financially obligating commitment
- Must not be used as a mechanism to transfer or obligate funds, property, personnel, goods, or services

1. **Related Issuances:** None
2. **Responsible Officials:** Management Analysis and Services Office
3. **Material Superseded:** None
4. **Recertification:** This document is scheduled for recertification on or before the last working day of October, 2018.
5. **Point of Contact:** Thomas Jones, Policy Analyst, Management Analysis and Services Office, 770-488-4777.

To go directly to the policy, click on the link below or enter the following URL into the location line of your browser.

<http://isp-v-maso-apps.cdc.gov/policy/Doc/policy597.pdf>

/s/Sherri A. Berger, M.S.P.H.
Chief Operating Officer

¹References to CDC also apply to the Agency for Toxic Substances and Disease Registry (ATSDR).

DEVELOPMENT AND EXECUTION OF MEMORANDA OF UNDERSTANDING AND MEMORANDA OF AGREEMENT

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1. PURPOSE

This policy establishes requirements for the development, use, management and maintenance of Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) at the Centers for Disease Control and Prevention (CDC¹).

2. BACKGROUND

CDC uses various written instruments to record its agreements and partnerships with other entities that further its public health mission. MOUs/MOAs are one example of these instruments. An MOU/MOA is a document that describes in very broad terms the mutual understandings, concepts, goals, and plans shared by the parties. The performance of one party is not necessarily dependent on the performance of the other party (i.e. does not require reimbursement or other support). An MOU/MOA should not bind the agency; therefore its language should be written with care, so as not to imply a binding agreement or financially obligating commitment. An MOU/MOA in and of itself is not a mechanism for transferring or obligating funds, property, personnel, goods, or services.

3. POLICY

This policy focuses on MOUs/MOAs² between CDC and other federal agencies, state, tribal, and local governments, private non-profit organizations, for-profit organizations, foundations, foreign governments, and any other entities. The agreement must be consistent with CDC's mission and authorized by federal law and regulatory requirements. Any agreement that requires the transfer of funds, goods, services, or detail of personnel, must be in accordance with the Economy Act (31 U.S.C. 1535) or other applicable authority and, as appropriate, be implemented through established procurement mechanisms that meet all pertinent regulations. For example, if considering a detail of personnel, CDC should adhere to the guidelines established in HHS Human Resources Manual Instruction 300-3 and the [Intergovernmental Personnel Act](#).

¹ References to CDC also apply to the Agency for Toxic Substances and Disease Registry.

² The terms MOU and MOA are used interchangeably in this document.

For situations in which CDC will be receiving funds or goods as a gift, CDC must follow the CDC Policy, [Administration of Gifts to CDC](#).

When drafting an MOU/MOA, Centers/Institute/Offices (CIOs) must consider the following items:

A. Prohibited Indemnification Agreements or Clauses

An agreement to indemnify is an agreement to assume financial, legal, or other liabilities on behalf of another party. Neither CDC, or any person in CDC, may agree to indemnify any other party without specific federal statutory authorization. Federal law, 31 U.S.C. 341(a)(1)(A) and 1341(a)(1)(B), commonly referred to as the Anti-Deficiency Act, prohibits all officers and employees of the United States government from making or authorizing expenditures or obligations exceeding appropriated funding, and from obligating payment of money before it is appropriated. A typical indemnification clause violates both provisions of the Anti-Deficiency Act because it potentially obligates the federal government (or CDC) to pay an unspecified, unlimited, and un-appropriated amount of money should parties to the MOU/MOA have property lost, damaged, or destroyed, a person injured or killed, or incur other legal liabilities or expenses.

B. Use of an MOU/MOA

Generally an MOU/MOA is used to document a non-binding agreement between CDC and another party to cooperate or collaborate on a particular topic or project. These agreements are considered non-binding because they should not create an enforceable obligation on the part of CDC or the other party, and may be terminated unilaterally within the courtesy timeframes provided in the agreement. Any losses incurred by either party based on the failure to perform or termination of the agreement are born by the party(ies) incurring the loss. Each MOU should contain the following language:

Nothing in this MOU intends to create a legally binding obligation between the parties or the obligation of appropriated funds. Any activities under this MOU that contemplate future funding by the parties will be carried out under a separate agreement under which the obligation of funds is appropriate.

An MOU/MOA must not be used to replace a binding agreement, such as a procurement contract, grant, or cooperative agreement.³

C. Development and Approval Process

³ A procurement contract will be used when the principal purpose of a transaction is acquisition, by purchase, lease, or barter of property or services for the direct benefit or use of the Federal government. The primary beneficiary under a procurement contract is the Federal government. A grant or cooperative agreement will be used when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the recipient, as a proxy for the "public," as opposed to the Federal government.

The originating office should coordinate and communicate with participants and stakeholders as early as possible and:

- 1) Check the official electronic repository of MOU/MOAs maintained by the Division of Executive Secretariat (DES) to ensure that the MOU/MOA does not conflict with any preexisting agreements approved by CDC
- 2) Ensure the MOU/MOA is reviewed and approved by the originating CIO Management Officer
- 3) Enter information from the MOU/MOA into the CDC Forecasting Portal for awareness prior to entering clearance/submission channels. Additional information on the Forecasting Portal can be found at <http://intranet.cdc.gov/od/ocs/forecasting.htm>.
- 4) Advise the DES at least four weeks in advance if the signature of the Director of CDC or HHS Secretary is required
- 5) Ensure all applicable program offices review the MOU/MOA to ensure the partnership and/or activities stated in the agreement are legal, comply with public policy, are reasonably administered, meet generally accepted public standards, and do not create a conflict of interest or financially obligate the agency. This may include:
 - Human Resources Office (HRO) for detail and personnel issues
 - Office of the Chief Financial Officer (OCFO)⁴ for financial related questions
 - Office of the General Counsel (OGC) for MOU/MOAs that vary from the template provided in Appendix A

Note: Detailed applicable program office requirements are provided in the responsibilities section of this policy and in Appendix A.

- 6) Ensure all MOUs/MOAs that require the CDC Director's signature or the HHS Secretary's signature are submitted through the DES formal approval process. Programs are responsible for obtaining written clearances from their own approving officials. DES will seek additional written clearances from relevant offices as needed
- 7) Ensure all MOUs/MOAs not signed by the Director of CDC are approved by the appropriate CIO, and signed by an individual with the required delegated authority, prior to execution
- 8) Ensure the delegated authority to approve MOU/MOAs is consistent with the authority to enter inter-agency agreements, intra-agency, and international organization

⁴ As a rule, MOUs should not create a financial obligation, and therefore, review by the OCFO is not required. However, the OCFO Budget Execution Services Branch Chief for the CIO in which the MOU originated will review MOUs as requested by the CIO. CDC is subject to a variety of authorities, limitations, and restrictions and an MOU may not expand or otherwise change what the agency is legally authorized to do. To guard against entering into prohibited activities, consultation with OCFO is advisable.

reimbursable agreements established under 31 U.S.C. Section 1535 (the Economy Act) or other applicable authority - see http://isp-v-maso-apps.cdc.gov/DOA/docs/doa_69.htm

- 9) Log an electronic copy of the signed document into the official electronic repository of MOU/MOAs maintained by the DES. This is required for all MOU/MOAs regardless of who approves and signs them
- 10) Maintain the signed original hardcopy of the MOU/MOA, except in the case of MOU/MOAs signed by the CDC Director or HHS Secretary. For those, DES will store the original hard copy. All records (e-mail and non-e-mail) pertaining to MOUs/MOAs must be retained and disposed of in accordance with the CDC Records Control Schedule

4. RESPONSIBILITIES

A. Originating CIO

- Utilize the MOU/MOA template in Appendix A to the extent possible. Provisions provided in this template are general in nature; more specific provisions requested either by the participating CDC entity or the Partner should be reviewed by OGC.
- Ensure the correctness of both the format and content of all MOUs/MOAs developed for their areas
- Ensure all MOU/MOAs are reviewed and approved as appropriate by the CIO Management Officer⁵
- Ensure information from the MOU/MOA is entered into the CDC Forecasting Portal for early awareness prior to entering clearance/submission channels
- Submit required MOU/MOAs to OCFO and OGC for review in accordance with this policy
- Ensure all MOUs/MOAs that involve personnel and detail of personnel are submitted to HRO and OCFO for review
- Ensure MOUs/MOAs are signed by an individual with the appropriate delegated authority as established in:
http://isp-v-maso-pps.cdc.gov/DOA/docs/doa_69.htm
- Log copies of signed MOU/MOAs in the central repository maintained by DES⁶
- For hardcopy MOUs/MOAs, not signed by the CDC Director, ensure proper storage

⁵ As appropriate, review MOU/MOA and related documents to ensure compliance with the HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications.

⁶ DES manages the official electronic repository and will develop standard operating procedures to guide CIOs on how to log electronic copies of signed MOU/MOAs into the repository.

- by relevant program
- Maintain a copy of MOU/MOAs and related records in accordance with an approved records control schedule
- Be familiar with the requirements of this policy

B. Office of the Chief Financial Officer

The OCFO Budget Execution Services Branch Chief will review MOUs/MOAs on a case by case basis as requested to ensure the activities stated in the agreement pose no financial impact to the agency and are consistent with appropriations law.

C. Office of the General Counsel (OGC)

- Provide legal advice to CDC staff upon request regarding all aspects of MOU/MOA implementation and performance and related issues
- Review MOU/MOA upon request to ensure the partnership and/or activities stated in the agreement are appropriate for an MOU/MOA, consistent with applicable authority, and do not contain inappropriate provisions that seek to bind the agency to fiscal or other commitments. OGC review will not be needed where the agreement follows the MOU template and no other issues or concerns are identified by the CIO, OCFO, or other offices.

D. Human Resources Office (HRO)

As applicable, review MOU/MOAs, if related to personnel actions, (such as detail or re-assignment of CDC personnel) to ensure compliance with HHS Human Capital Manual Instruction 300-3: Detail and Intergovernmental Personnel Act Assignments.

E. Division of the Executive Secretariat (DES)

Establish, designate, and maintain an electronic repository for CDC MOUs/MOAs. Provide standard operating procedures for CIOs to log MOU/MOAs into the electronic repository for the record. DES will only store hardcopy, signed originals of MOUs and MOAs that are signed by the CDC Director or the HHS Secretary.

5. DEFINITIONS

A. Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA): A document that describes very broad terms of mutual understanding, concepts, goals and plans shared by the parties. It can also describe each party's specific responsibilities and actions to accomplish those goals.

B. Parties: The parties to a MOU/MOA covered by this policy are CDC and one or more governmental or private entities.

6. ACRONYMS

HHS - Department of Health and Human Services

CDC - Centers for Disease Control and Prevention

CIO - Centers, Institute, and Offices

DES - Division of Executive Secretariat
HRO - Human Resources Office
MO - Management Officer
MOA - Memorandum of Agreement
MOU - Memorandum of Understanding
OCoS - Office of the Chief of Staff
OCFO - Office of the Chief Financial Officer
OD - Office of the Director
OGC - Office of General Counsel

APPENDIX A

MEMORANDUM OF UNDERSTANDING
Between
[Name of Partner(s)]
AND
Centers for Disease Control and Prevention
[CDC Centers/Institute/Offices]
(To be used for collaborations involving no funding.)

This Memorandum of Understanding (MOU) sets forth the terms and understanding between [Partner] and [CDC Participant] to [Summary description of partnership, its purpose and activities, and potential future implications.]

BACKGROUND

[Provide a description of the organizations and their functions. Why form a partnership between these organizations?]

PURPOSE

This MOU will.... [Provide the purpose of the partnership, including the public health benefit to be achieved.]

The goals of the partnership will be accomplished by undertaking the following activities: [List and describe the activities that are planned for the partnership.]

RESPONSIBILITIES

[Describe the responsibilities of each party in the partnership.]

FUNDRAISING/SOLICITATION

[Partner] will make clear, in any solicitation for funds to cover the cost of its activities that [Partner], not HHS or CDC, is asking for the funds. [Partner] will not imply that HHS or any component agency, endorses any fundraising activities in connection with these activities. [Partner] will make clear to donors that any gift will go solely toward defraying the expenses of [Partner], not HHS or CDC expenses.

PUBLICITY AND ENDORSEMENTS

[Partner] will not use the name of HHS, or any component agencies, except in factual publicity. Factual publicity includes dates, times, locations, purposes, agendas and fees involved with partner activities. Such factual publicity shall not imply that the involvement of HHS or CDC serves as an endorsement of the general policies, activities, or products of [Partner]; where confusion could result, publicity should be accompanied by a disclaimer to the effect that no endorsement is intended. [Partner] will clear all publicity materials for the event with HHS and CDC to ensure compliance with this paragraph.

INTELLECTUAL PROPERTY

This MOU does not, and is not intended to; transfer to either party any rights in any intellectual property of the other party. Both parties agree that the material provided by CDC is public domain material. HHS and CDC shall maintain full rights to re-use the content and material that it provides for any and all CDC purposes, and/or to share with other collaborators or requestors.

Per mutual agreement between [Partner] and CDC, [Partner] grants full permission and a royalty-free, non-exclusive, irrevocable license to HHS, CDC to use, reproduce, publish, distribute, and exhibit materials arising from this agreement for use in education, training, and other purposes consistent with CDC's mission.*

TRADE SECRET OR COMMERCIAL INFORMATION

CDC shall comply with 18 U.S.C. Section 1905, the Trade Secrets Act, and safeguard any [Partner] proprietary and confidential information obtained pursuant to activities set forth in this MOU. [Partner] shall clearly mark all information, in any format, of a proprietary and confidential nature provided to CDC, as such.*

PUBLIC AVAILABILITY

This partnership agreement shall be publicly available.

LEGAL AUTHORITY

This MOU is authorized by... [Insert legal authority; consult OGC as necessary.]

FUNDING

Nothing in this MOU intends to create a legally binding obligation between the parties or the obligation of appropriated funds. Any activities under this MOU that contemplate future funding by the parties will be carried out under a separate agreement under which the obligation of funds is appropriate. In general each party is expected to bear the costs of its participation in their project. Nothing in this Agreement shall obligate the [Partner], HHS, or CDC to any current or future expenditure of resources in advance of the availability of appropriations from Congress.

LIABILITY

Each party will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees under this Agreement, and for any loss, cost, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its agents or its own employees, while conducting activities under and pursuant to this Agreement. The Government's liability shall be governed by the provisions of the Federal Tort Claims Act, [28 U.S.C. 2671-80 (1976)].

GOVERNING LAW

This MOU shall be governed by applicable federal law.

ENTIRETY

This MOU represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral, with respect to the subject matter of this MOU.

EFFECTIVE DATE

This MOU will become effective on the date of the last signatory to the agreement.

REVISIONS/AMENDMENTS

It is understood and agreed that the Parties may revise or modify this MOU by written amendment hereto, provided such revisions or modifications are mutually agreed upon.

TERMINATION

This MOU is entered into voluntarily by all Parties, and may be modified by mutual consent of authorized officials from the [Partner] and CDC. This MOU may be terminated by either party with thirty (30) days advance written notice. In the absence of a mutual agreement by authorized officials from the [Partner] and CDC to continue to further this partnership, this MOU shall end on [End date of partnership.]

[Partner signatory] [Date]
[Position, Partner]

[CDC signatory] [Date]
[Position, Center/Division, etc.]

Centers for Disease Control and Prevention

*** Provisions provided in template MOU are general in nature; more specific provisions requested either by the participating CDC entity or the Partner should be reviewed by OGC.**