



**Third Party In-Kind
Cost Share Contributors**

Office of the General Counsel
U.S. Department of Commerce
2010

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1

What will this presentation cover?

- 1. What rules apply to third party in-kind cost share contributions?
- 2. What is the definition?
- 3. Who makes the contribution?
- 4. Who is a third party?
- 5. What is the impact?
- 6. How are contributions valued?
- 7. What are the valuation rules?
- 8. What about NIST unallowable costs?

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2

What rules apply to third party in-kind cost share contributions?

- Federal common rules on grants administration, 2 C.F.R. Part 215, Office of Management and Budget (OMB) Circulars A-110 (for non-profits and universities) and A-102 (for state and local governments)
- <http://www.whitehouse.gov/omb/assets/omb/circulars/a110/2cfr215-0.pdf>
- Codified by the Commerce Department at 15 C.F.R. Parts 14 and 24, respectively
- Among other requirements, these regulations establish requirements for third-party contributions to grants

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3

What is the definition of “third party in-kind contributions”?

- For universities, 15 C.F.R. 14.2 (nn) applies: “*Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.”



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4

Who makes the contribution?

- The cost share contribution under discussion is
 - NOT from the grant recipient itself
 - NOT from a contractor
 - NOT from a sub-recipient
- It is a “third party”

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5

Who is a Third Party?

- When a recipient's partner is *not receiving something of value from the recipient* (not a sub-recipient), and
- the partner generally is *not* paid by the recipient to *provide* a good or service (not a contractor),
- the partner is a “third party”
- The partnership arrangement is often documented in a written agreement that might be titled a contract, memorandum of agreement, or something else

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6

What is the impact of third party in-kind cost share contributions?

- In addition to being defined in regulations, third party in-kind contributions are referenced in regard to recipient “outlays”
- For universities, under 15 C.F.R. 14.2 (x), “Outlays or expenditures,” or charges made to the project, includes “the value of third party in-kind contributions”

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7

How are contributions valued?

- 15 C.F.R. Parts 14 and 24 establish how cost share is valued
- For universities, Sec. 14.23 applies
- Some programs also establish further specific rules, such as a specific limitation on the amount of such contributions
- NIST Construction Grant Program does not have such a limit

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8

What are the valuation rules in Sec. 14.23 for universities?

- Similar policies apply for third party in-kind contributions and cash, such as:
- verifiable from records
- not part of other Federally assisted programs
- necessary and reasonable for the project
- allowable under cost principles
- not paid under another Federal award unless authorized by statute
- provided for in the approved budget

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9

What are the valuation rules in Sec. 14.23 for universities?

- Specific policies described for valuation of:
- Services of “an employer other than the recipient”
- Donated supplies
- Donated property for which title passes to the recipient
- Loaned equipment
- Other

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10

What are the valuation rules in Sec. 14.23 for universities?

- Under 15 C.F.R. Sec. 14.23(h)(5), The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:
 - (i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.
 - (ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

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11

What about NIST unallowable costs?

- Unallowable cost policies specific to the NIST Construction Grant Program apply to cost share contributions from third parties
- Even if 15 C.F.R. 14.23 and cost principles suggest a cost is allowable, if the NIST Construction Grant Program considers it unallowable, this applies to the recipient and third party in-kind cost share contributions

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12

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