




GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D C 20230

APR 8 1994

MEMORANDUM FOR: Addressees Listed Below:

FROM: Ginger Lew 
General Counsel

SUBJECT: Memoranda of Understanding

I have been informed that various Department officials have been executing memoranda of understanding (MOUs) between their operating units and outside individuals and organizations without prior review by the Office of General Counsel. This lack of prior legal review raises the risk that the Department is entering into obligations which may violate, or lead to violations of, the many laws governing an agency's obligation of its appropriated funds. In addition, these MOUs may be in an improper format or may not properly reflect the Department's authority for entering into a specific relationship.

The MOU format is permissible if the principal purpose of the relationship between the Department and another organization is to memorialize a joint project (on a matter of mutual interest between the Department and any nonprofit, research, or public organization) or an Economy Act transaction with another Federal agency (determined to further the economy and efficiency of governmental operations). MOUs are not to be used in place of formal procurement contracts or financial assistance (grants and cooperative agreements), nor as a sole source justification for the award of procurement contracts or financial assistance. All responsible Department officials should seek prior legal advice and review from Alden Abbott, the Assistant General Counsel for Finance and Litigation, when a contemplated relationship with an outside individual or organization will take the form of a procurement contract or financial assistance. If the contemplated relationship more accurately reflects a joint project or an Economy Act transaction, please contact Barbara S. Fredericks, the Assistant General Counsel for Administration.

In no instance should any type of agreement or MOU be executed prior to coordination with the appropriate operating unit budget office to ensure funds are available. Furthermore, obligations of funds may only be made by authorized government officials which are Contracting Officers for procurement contracts, Grants Officers for grants and cooperative agreements, and Heads of Operating Units for joint projects.

Addressees: Secretarial Officers
Heads of Operating Units
Assistant General Counsels
Chief Counsels
Bureau Counsels