

ATTACHMENT 1c

APPLICABLE SECTIONS OF LAWS OR REGULATIONS

Office of Management and Budget
Guidance on the Use of Challenges and Prizes to Promote Open Government



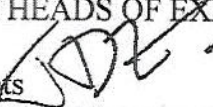
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients 
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SUBJECT: Guidance on the Use of Challenges and Prizes to Promote Open Government

At the outset of his Administration, President Barack Obama signed the Memorandum on Transparency and Open Government, committing the Administration to creating a more transparent, participatory, and collaborative government. On December 8, 2009, the Director of the Office of Management and Budget (OMB) issued the Open Government Directive (Directive), which required executive departments and agencies to take specific actions to further the principles established by the President's memorandum. The Directive also tasked the OMB Deputy Director for Management with issuing guidance for the increased use of challenges and prizes to develop new tools and approaches to improve open government. This memorandum highlights for agencies policy and legal issues related to the implementation of the Obama Administration's commitment to increase the use of prizes and challenges as tools for promoting open government, innovation, and other national priorities.

I. Policy

A. Background

In September 2009, the President released his *Strategy for American Innovation*, calling for agencies to increase their ability to promote and harness innovation by using policy tools such as prizes and challenges. Some agencies already have started to effectively use prizes and challenges. For example, Defense Advanced Research Projects Agency's "grand challenges" have advanced the state of the art of robotic cars that drive themselves. The National Aeronautics and Space Administration's (NASA) Centennial Challenges have triggered an outpouring of creative solutions from students, citizen inventors, and entrepreneurial firms for technologies such as lunar landers, space elevators, fuel-efficient aircraft, and astronaut gloves. The Department of Energy has sponsored the L Prize, designed to spur the development of high-quality, highly efficient solid-state lighting products to replace today's inefficient light bulbs. The Environmental Protection Agency has used prizes to encourage students and others to develop videos to promote environmental stewardship. The Department of State has sponsored highly successful video and writing contests that have attracted contestants from a broad diversity of countries and geographic regions, and that have furthered the U.S. public diplomacy mission.

B. Potential Benefits of Prizes

The Administration believes that prizes and challenges have a number of potential benefits. Under the right circumstances, they may allow the government to:

- Establish an important goal without having to choose the approach or the team that is most likely to succeed;
- Pay only for results;
- Highlight excellence in a particular domain of human endeavor to motivate, inspire, and guide others;
- Increase the number and diversity of the individuals, organizations, and teams that are addressing a particular problem or challenge of national or international significance;
- Improve the skills of the participants in the competition;
- Stimulate private sector investment that is many times greater than the cash value of the prize;
- Further a Federal agency's mission by attracting more interest and attention to a defined program, activity, or issue of concern; and
- Capture the public imagination and change the public's perception of what is possible.

Accordingly, it is Administration policy to strongly encourage agencies to:

- Utilize prizes and challenges as tools for advancing open government, innovation, and the agency's mission;
- Identify and proactively address legal, regulatory, technical, and other barriers to the use of prizes and challenges;
- Select one or more individuals to identify and implement prizes and challenges, potentially in partnership with outside organizations, and to participate in a government-wide "community of practice" led by the Office of Management and Budget and the Office of Science and Technology Policy; and
- Increase their capacity to support, design, and manage prizes, potentially in collaboration with external partners.

To support agencies in the execution of prizes that further the policy objectives of the Federal Government, the Administration will make available a web-based platform for prizes and challenges within 120 days. This platform will provide a forum for agencies to post

problems and invite communities of problem solvers to suggest, collaborate on, and deliver solutions. Over the longer term, the General Services Administration (GSA) will also provide government-wide services to share best practices and assist agencies in developing guidelines for issuing challenges. Additionally, GSA will develop, as expeditiously as possible, a contract vehicle to provide agency access to relevant products and services, including technical assistance in structuring and conducting contests to take maximum benefit of the marketplace as they identify and pursue contest initiatives to further the policy objectives of the Federal Government.

II. Use of Prizes and Challenges – Policy Issues for Consideration

In considering the use of prizes and challenges, agencies should have a clear idea of what they are trying to accomplish by supporting or encouraging the creation of a prize, and how the prize will help them achieve that goal. A prize should not be an end in itself, but one means within a broader strategy for spurring private innovation and change. Furthermore, agencies should plan appropriately for all stages of prize development and, where permissible, consider partnering with other entities that might administer, support, or catalyze the prize.

A. Choose the Right Prize for the Goal

Experts often make a distinction between “recognition” prizes that honor past achievements, and “inducement” or “incentive” prizes that encourage participants in the competition to achieve a particular goal. These experts have developed different characterizations of prize types. A recent study identified six prize archetypes.¹ Drawing from this framework, this section provides examples of different prize types that agencies may wish to consider, subject to their own analysis of legal and ethical issues, including those identified in sections III and IV.

As noted, a prize should not be an end in itself, but one means within a broader strategy for spurring change. When considering prizes, agencies should select the type of prize best able to accomplish the broader aim.

- *Exemplar prizes*, such as the Nobel Prize, define excellence within an area. Historically, most prizes have been exemplar prizes that recognize past general achievement in a field, but other prize designs may more effectively spur *future* innovation.
- *Point solution prizes* aim to reward and spur development of solutions for a particular, well-defined problem. NASA, for example, is using an online “innovation marketplace” with 180,000 participants to spur solutions to problems such as forecasting solar activity, keeping food fresh in space, and developing a compact aerobic device for astronauts. An advance market commitment may be one vehicle for spurring specific solutions by providing a commitment to purchase a product that does not yet exist. In the private sector, for example, five governments and the Gates Foundation have pledged \$1.5

¹ McKinsey & Company, “And the winner is...”

(http://www.mckinsey.com/App_Media/Reports/SSO/And_the_winner_is.pdf).

billion to support the purchase of pneumococcal vaccines for children in developing countries, which could save the lives of 7 million children by 2030.

- *Exposition prizes* help identify and promote a broad range of promising ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties. Successful exposition prizes can mobilize capital and institutions in support of ideas and practices developed during a prize competition. For example, the Director of National Intelligence sponsors the Galileo Award to encourage Federal employees to propose creative solutions for the Intelligence Community, and provides winners with a cash prize and the opportunity to brief senior officials on their ideas.
- *Network prizes* build networks and strengthen communities by organizing winners into new problem-solving communities that can deliver more impact than individual efforts. One example would be a contest encouraging people worldwide to share their thoughts and ideas on a variety of topics of universal interest and then organizing participants into an active online community, creating a global, cross-cultural dialogue in furtherance of the public diplomacy mission of the United States.
- *Participation prizes* create value during and after the competition – not through conferral of the prize award itself but through their role in encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and beyond the competition. As part of his “Educate to Innovate” campaign, for example, President Obama has highlighted the FIRST robotics competitions, which engage over 200,000 students, and are designed to motivate young people to pursue opportunities in science, technology, engineering, and mathematics. A contest encouraging good nutrition on the part of school cafeterias or school children would be an example of a participation prize; contestants participate not necessarily to collect the reward, but for the fun and benefits of the competition itself.
- *Market stimulation prizes* try to establish the viability of a market to address a potential market failure, mobilize additional human talent and financial capital to jumpstart the development of a new industry, or change public perceptions about what is possible. The goal of the Ansari X Prize, for example, was to serve as a catalyst for the private spaceflight industry.

B. Focus on All Stages of the Prize, including Pre-Prize and Post-Prize Stages

Agencies should plan appropriately for all stages of prize development and administration. The design of a prize and the award process often receive the bulk of sponsors’ attention, but effective sponsors devote extensive time to defining the broader goals of the prize and analyzing the motivations of participants before they consider the prize type or the purse. Agencies also should take care to plan for the post-prize phase, reinforcing the impact of an award with other investments and follow-up activities. In some cases, it may be helpful and appropriate to increase the visibility of a prize by involving senior agency officials in the launch. It may be further helpful in some

instances for an agency to identify government actions that would increase the impact of the prize over the long-term.

C. Choose the Right Vehicles and Partners for the Prize

Agencies should think broadly about the role that effective partners can play in administering or publicizing contests. It may be appropriate, where legally permissible, to seek Federal agency or non-federal partners to help meet agency goals. Some or all of the following vehicles may, in appropriate circumstances, be worthy of consideration:

- Designing, administering, and paying for the prize internally within the agency;
- Providing a grant, cooperative agreement, or contract to an outside organization that covers some or all of the costs associated with the prize purse and prize administration; or
- Encouraging the formation of a public-private partnership to fund and administer a prize.

III. Potential Legal Authority – Issues for Consideration

There are a number of authorities under existing statutes that agencies potentially could rely upon to structure prize competitions. The following, which lists some possible legal authorities, does not purport to be exhaustive. Moreover, these authorities will not be available for all agencies. Agencies considering prizes and competitions should consult with their general counsels concerning legal issues relevant to their agencies and to ensure that each use of a prize or competition is consistent with congressional authorization or appropriation.

A. Direct Prize Authority

A number of agencies have direct statutory authority to conduct prizes contests. Pursuant to these authorities, agencies have been able to structure prize competitions with a variety of features.

1. Agency-Funded and Agency-Administered Prizes. Some agencies can directly administer prize competitions and provide the funding for the prize purse. NASA (42 U.S.C. § 2459f-1) and the Departments of Defense (10 U.S.C. § 2374a) and Energy (42 U.S.C. § 16396) possess the authority to directly administer prize competitions and use appropriated funds to provide the prize purse.
2. Third-Party Administered Prizes. Third-party administration of prize contests has also been specifically authorized by statute. NASA (42 U.S.C. § 2459f-1(h)) and the Department of Energy, with respect to the Bright Tomorrow Lighting Prize (42 U.S.C. § 17243), have the discretion to select a third party to administer a prize competition. Congress has required that the Department of Energy H Prize (42 U.S.C. § 16396(f)) be administered by third parties.
3. Outside Funding. Several statutes provide for agencies to seek outside funding for prize contests. For example, NASA (42 U.S.C. § 2459f-1(i)(1)) and the

National Science Foundation (42 U.S.C. § 1870(f)) are permitted to receive private contributions for the purposes of funding prize competitions.

4. Recognition Awards. Recognition prizes can be used to support several of the prize contests referenced in section II. A number of agencies have explicit authority to offer recognition prizes and awards. For example, the Department of Commerce is authorized to present a Commercial Space Achievement Award under 15 U.S.C. § 5808. The Department of Transportation is authorized to provide a medal and cash prize to private sector recipients or Federal laboratory personnel whose efforts have “substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact.” 15 U.S.C. § 3711c. The Department of Education recognizes “Blue Ribbon Schools” under 20 U.S.C. § 7243(b)(5).

B. Grants and Cooperative Agreements

Some agencies have authority to award grants and/or participate in cooperative agreements and may be able to conduct prize competitions through that authority. A “grant” is defined in the Federal Grant and Cooperative Agreement Act (and in OMB Circulars) as financial assistance by the Federal Government that provides support or stimulation to accomplish a public purpose; a “cooperative agreement” is similarly defined, with the additional criterion that the agency expects to have substantial involvement with the recipient in carrying out the activities contemplated in the agreement. Neither instrument may be used to acquire goods or services for the direct use or benefit of the Federal Government, such as to conduct an agency’s own prize contest; agencies must use procurement contracts for that purpose. Accordingly, where grants or cooperative agreements are appropriate mechanisms under a given statute to distribute funds, then a “cash prize for a competition” could potentially also be a type of grant or the subject of a cooperative agreement that could be used if otherwise consistent with the specific authorizing statute for the grant. Discretionary, competitive grant programs (in contrast to formula grants or block grants) may be best suited as vehicles for prize competitions, since discretionary, competitive grants are often authorized by statutes that do not specify the manner in which grant funds must be distributed. As part of their consideration of using grants to facilitate prize competitions, agencies may examine their authority to make fixed obligation awards without requirements for Federal monitoring of actual costs.

C. Necessary Expense Doctrine

An agency without explicit prize authority might be able to conduct a contest and/or offer a prize if doing so bears a direct relationship to the agency’s statutorily authorized mission. Agencies should consult their general counsels to determine whether such a relationship exists.

Under the “necessary expense” doctrine, an agency has reasonable discretion in determining how to carry out the objects of an appropriation. To qualify as a “necessary

expense,” the expenditure must: (1) make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available; (2) not be prohibited by law; and (3) not be an item that falls within the scope of some other appropriation or statutory funding scheme. See Government Accountability Office, Principles of Federal Appropriations Law, 4-19 to 4-29, 4-162 to 4-164 (discussing Comptroller General’s view of the “necessary expense” doctrine and government-sponsored contests).

For example, the Comptroller General has viewed an agency’s decision to sponsor a contest as a permissible exercise of administrative discretion in implementing a statutory objective to provide “recreational services.”² See id. at 4-163. Similarly, where an agency has a statutory mandate to collect information from the public, the Comptroller General has approved contests incentivizing the public to provide such information. See id. Another example of agencies’ use of the necessary expense doctrine to directly host competitions with prize purses includes NASA’s reliance on its statutory authority to seek and encourage the commercial use of space to sponsor a contest in 2005 to develop technologies that could be useful in developing a space elevator, although in that case there was no contest winner and no funds were distributed.³

Statutory authorities in areas such as public education, outreach, and cooperation with nongovernmental entities may also be an appropriate basis for agencies to pursue participation prizes or certain types of prizes, or to assist prize competitions even if not directly sponsoring the contest or funding a prize purse. For example, relying on its authority under the “Laboratory cooperative science centers and other authorized education activities” provision established in the Energy Policy Act of 2005 (42 U.S.C. § 7381b), DOE issued grant funds to support the outreach and educational efforts of the nonprofit X Prize Foundation, which is conducting a contest for the successful development of vehicles with 100 mile per gallon efficiency.

² GAO decisions are not binding on Executive branch agencies. See Memorandum Opinion for Sara D. Lipscomb, General Counsel, Small Business Administration, from Jeannie S. Rhee, Deputy Assistant Attorney General, *Re: Permissibility of Small Business Administration Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs*, at 13 (August 21, 2009) (noting that the Office of Legal Counsel “has on many occasions issued opinions and memoranda concluding that GAO decisions are not binding on Executive Branch agencies and that the opinions of the Attorney General and of this Office are controlling” and providing citations). Nonetheless, GAO rulings and analysis may be helpful to the Executive in its own determinations as to availability of appropriations and the permissibility of expenditures of public funds.

³ NASA at that time did not have explicit statutory prize authority; however, its appropriations act anticipated the conduct of prize competitions where “otherwise authorized.”

Agencies may have increased latitude to offer cash prizes in competitions that involve artistic design. See Government Accountability Office, Principles of Federal Appropriations Law, 4-162 to 4-164. Any prize purse awarded must be related to the reasonable cost of producing the design. See *id.* For example, using artistic merit as the primary selection criteria, EPA has conducted prize contests for educational videos under its authorities in the Clean Water Act, 33 U.S.C. § 1254(a)(1), and Clean Air Act, 42 U.S.C. § 7403(a)(5), to provide training to the public.

D. Authority to Provide Non-Monetary Support to Prize Competitions

Agencies may have statutory authorities in areas such as public education, outreach, and the like that can serve as a basis for supporting prize competitions without providing funds. For example, the EPA entered into a no-funds “co-sponsorship” agreement with the American Le Mans Series (ALMS) to provide technical assistance and visibility to “Green Challenge” racing competitions using its authority to cooperate with nonprofit entities to reduce air pollution under section 103 of the Clean Air Act (42 U.S.C. § 7403(b)(2)).

E. Procurement Authority

Agencies may be able to conduct a procurement in a contest-like manner to encourage greater innovation and private sector participation, when the payment of a prize is for a good or service for the benefit of the government. Where appropriate, an agency could thus use existing procurement authority, such as that provided by the Federal Acquisition Regulation (48 C.F.R. Chapter 1), to issue a solicitation seeking offers that would have to meet certain technical criteria – essentially the rules of the contest – for which the agency would pay a fixed amount (the prize). In situations where small monetary prizes or small procurements are considered (in particular, below the \$100,000 simplified acquisition procedure threshold), agencies might also be able to leverage the flexibilities afforded by simplified acquisition procedures to allow for innovative, contest-based approaches to such procurements.

In addition, a contractor may be able to conduct a prize competition among sub-contractors to encourage innovative means of satisfying the contract and achieving the agency’s procurement needs. Agencies should work with their Office of General Counsel and procurement officials to structure competitions that are compliant with applicable rules and regulations.

F. Other Transactions Authority

Some agencies are authorized to enter into “other transactions” (OTs), which may provide those agencies with the flexibility to structure prize competitions that draw in entities that do not traditionally do business with the Federal Government or to leverage private sector funding. These authorities differ by agency, so those agencies that possess OT authority should consult their general counsels and examine their specific implementing regulations and guidance documents.

While OTs can resemble contracts, grants, and cooperative agreements in function, OTs are typically not subject to the FAR or other Federal laws and regulations governing normal Federal transactions. Innovative companies often cite government requirements governing intellectual property rights and cost accounting standards, among others, as bases for avoiding doing business with the government. In some cases, OTs are able to provide flexibility for some of these requirements in order to allow government agencies to: (1) attract nontraditional contractors who engage in cutting-edge research and development without requiring these entities to change most of their existing business practices; (2) to enter into agreements with traditional or nontraditional contractors in which there is significant private sector cost-sharing; or (3) enter into other innovative arrangements with contractors that would not be feasible under procurement contracts, grants, or cooperative agreements. Some protections of the government's interest in the use of funds remain, as implementing regulations for certain agencies' OTs established minimum requirements, such as auditing and reporting requirements. In particular, OTs that are structured as fixed-support, rather than expenditure-based, may provide these benefits (10 C.F.R. § 603.315; 32 C.F.R. § 3.4).

Individual OT agreements can vary in support of individual program objectives. For example, the Department of Defense (10 U.S.C. § 2371) has made use of this authority to procure prototype weapons systems from nontraditional government contractors. In 2007, the Department of Energy (42 U.S.C. § 7256(g)) entered into an OT agreement with a nontraditional contractor to design, construct, and operate an integrated ethanol biorefinery in which the Federal Government agreed to provide 21 percent of the total project cost.

The flexibility afforded to agencies with OT authority may allow those agencies that possess this authority to structure prize competitions. Prior to receiving its direct prize authority, NASA used its OT authority (42 U.S.C. § 2473(c)(5)) to enter into an agreement with a nonprofit organization to assist in the development of its 2005 Beam Power Challenge and Tether Challenge.

Agencies with OT authority should work with their Offices of General Counsel to determine whether this authority would be beneficial in structuring competitions.

G. Agency Partnership Authority

Agencies may have statutory authority to form partnerships with other agencies. See, e.g., 49 U.S.C. § 106(l)(6), 106(m) (providing FAA with the authority to enter into "other transactions" with and to accept "services, equipment, personnel, and facilities" from other Federal agencies). Such authority may prove useful to agencies that want to further their statutory missions by working with or supporting other agencies' prize endeavors. If contemplating such a partnership, an agency should be sure to consult with its Office of General Counsel.

H. Public-Private Partnership Authority

Agencies may have authority to partner with outside entities such as foundations and nonprofit organizations that may elect to award cash prizes or other forms of recognition directly to the winners of government prize competitions. A supplemental award from the private sector can increase the incentives for participation in a competition. An agency considering such partnerships should consult with its Office of General Counsel, and should specifically consider issues relating to its solicitation or gift acceptance authorities to ensure compliance with the rule against augmenting appropriations.

IV. Other Prize-Related Legal Issues

There are a number of common issues that must be addressed by agencies in structuring prize competitions.

A. FACA Compliance

The Federal Advisory Committee Act (FACA) imposes requirements related to certain groups formed to advise agencies or officers of the Federal Government. See 5 U.S.C. app. § 1 et seq. Agencies should be sure to comply with FACA's requirements, where applicable, when establishing a method of selecting a prize or contest winner. FACA may apply to a prize committee unless it is composed entirely of Federal officers or employees, and unless any outside individuals participating in committee meetings are not given a "vote or veto" over committee matters. See In re Cheney, 406 F.3d 723, 728 (D.C. Cir. 2005) (en banc). FACA may also apply when Federal agencies receive input from non-federal employees unless the agencies solicit advice from a group of individuals or entities on an individual basis, rather than the group as a whole. See Association of Am. Physicians & Surgeons v. Clinton, 997 F.2d 898, 913 (D.C. Cir. 1993); see also 41 C.F.R. § 102-3.40(e).

B. Ethical Issues and Federal Endorsement of Products or Services

Federal employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the general principle that employees will act impartially and not give preferential treatment to any private organization or individual. Any competition, challenge, or contest run by or with the involvement of a Federal agency must be run so as to ensure participants are treated equally and there is no conflict of interest, or appearance of a conflict, on the part of the contest judges or administrators.

Moreover, agencies should avoid any improper Federal endorsement of products or services when creating contests and prizes. See 5 C.F.R. 2635.702(c). Federal endorsement is not improper when it is "[i]n furtherance of statutory authority to promote products, services or enterprises" or "[a]s a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission." Id. Thus, agencies contemplating contests or prizes that could lead to the appearance of Federal endorsement should examine their statutory authorities to

determine if they have authority to promote products, services, or enterprises, or whether the contest or prize is offered “in support of” their statutory mission. Agencies should consult with their Offices of General Counsel on avoiding conflicts of interest and engaging in or permitting Federal endorsement, or the appearance thereof, in connection with government contests.

C. Intellectual Property

Agencies should carefully consider whether a competition will involve intellectual property and determine in advance how to assign the rights to such works between themselves and the winning contestants. For example, under the Bayh-Dole Act (35 U.S.C. § 200 et seq.): (1) small businesses, universities, and other nonprofit organizations that develop inventions with Federal funds received through procurement contracts, grants, and cooperative agreements can elect to retain title to and profit from these inventions, provided adherence to certain requirements; and (2) the Federal Government retains nonexclusive, nontransferable, irrevocable, royalty-free licenses to utilize these inventions. Pursuant to a 1983 Presidential memorandum to the heads of executive departments and agencies, and Executive Order 12951 of April 10, 1987, the requirements of the Bayh-Dole Act apply to large businesses as well. Agencies should also be cognizant of the potential need to address trademark, copyright, patent, and publicity rights. Agencies should consult with their general counsels in determining how to assign intellectual property rights.

D. Compliance with State Law

Agencies should evaluate the need for potential contests and prizes to comply with varying state laws. To the extent that state laws apply to a Federal prize competition at all, be aware that states generally regulate contests of chance much more heavily than they do contests of skill, and that injecting any element of chance into the selection of a contest or prize winner may significantly alter the state legal requirements with which the agency must comply.

E. Standard Requirements for Procurement Contracts, Grants, and Cooperative Agreements

Agencies that enter into procurement contracts, issue grants, or enter into cooperative agreements regarding prize competitions should consider standard requirements for documentation, reporting, and audits, and the Bayh-Dole Act (35 U.S.C. § 200 et seq.). Depending on the objectives, types, and sizes of prize competitions to be awarded, agencies may be able to modify the standard requirements to better match the administration and purposes of these awards. Agencies may consider applying all standard requirements pertaining to pre-award and audit requirements, and modifying – to the extent allowable by law – the requirements for post-award requirements and compliance with the OMB cost principles. For example, agencies may retain the requirements for recipients to have the necessary certifications, comply with conflicts of interest principles, maintain adequate proper internal control systems for funds accountability, and have the awards covered and reviewed under the Single Audit Act, where applicable. But, agencies may modify the post-award and cost compliance

requirements with respect to program income and financial reporting. This could include, for purposes of illustration and when legally allowable, a waiver of the requirement for recipients to file a final financial report since the awards are for fixed amounts. Agencies may also opt not to apply OMB cost principles since the prize awards are pre-determined and not based on costs. Exceptions to standard requirements should be made on a case by case basis.

F. Paperwork Reduction Act

Agencies should evaluate the applicability of the Paperwork Reduction Act (PRA) to any prize-related activities. As a general matter, if an agency is directing identical questions to, or imposing identical recordkeeping requirements on, ten or more persons, then such an information collection is subject to the PRA (44 U.S.C. § 3501 et seq.; 5 C.F.R. Part 1320). An agency is, however, permitted to ask the general public about ideas for improving current practices, and these general requests do not become subject to the PRA merely because they take the form of a contest, or because the agency announces that it will give a prize to those with the best ideas. The Office of Information and Regulatory Affairs at OMB will soon be issuing guidance to clarify when and how the PRA is applicable to competitions for prizes. To answer questions about the relationship between prizes and the PRA, agencies should consult with the Office of Information and Regulatory Affairs.

G. Privacy Act

Agencies should evaluate the applicability of the Privacy Act to any prize-related activities.

If you have any questions regarding this memorandum, please direct them to opengov@omb.eop.gov. Departments and agencies should consult agency general counsels in developing prize contests.