



UNITED STATES TRAVEL AND TOURISM ADVISORY BOARD

November 20, 2015

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Pritzker:

On behalf of the United States Travel and Tourism Advisory Board (TTAB), we are writing to offer recommendations designed to drive us ever closer to the President's goal of welcoming 100 million international visitors to the United States by the end of 2021. With your steadfast efforts to shepherd the work of and among the Tourism Policy Council, the TTAB and Brand USA, more has been done over the past few years to advance the U.S. as a tourism destination than in the previous two decades, and never with such coordinated public-private partnerships.

As a result, the previous TTAB submitted a top priority recommendation asking that you direct this board to review the vetting process for matching fund requests submitted by Brand USA as called for in the Travel Promotion Act of 2009 and to provide you with recommended enhancements. That board believed then, as we do now, that the success attained to date is a result of the tireless professionalism of the Commerce staff engaged in the vetting process, wedded to the marketing prowess and expertise of Brand USA. Further, an opportunity exists for Brand USA, the Department of Commerce and other Federal agencies to garner greater efficiencies through a set of strategic refinements to the matching funds vetting process.

Therefore, we respectfully submit these recommendations with the intent of accomplishing the following key objectives:

- 1. To optimize operational efficiencies for both the U.S. Government and Brand USA in order to maximize funds available for marketing, promotion and research.*
- 2. To improve the timeliness and predictability of cash flow for Brand USA.*
- 3. To enable all levels and types of partnerships envisioned with the passage of the Travel Promotion Act.*

RECOMMENDATIONS REGARDING PROCESS FOR SUBMITTING, REVIEWING AND VETTING MATCHING FUND REQUESTS

The Travel Promotion Act of 2009 (TPA) establishes a fund within the Department of Treasury called the “Travel Promotion Fund” and empowers the Secretary to transfer \$100,000,000 into the Fund to be available to Brand USA, subject to the restrictions of the matching requirements contained in the Act. The Act further empowers the Secretary to make transfers from the Fund to Brand USA, “...at least quarterly on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.”¹ In addition, Commerce, the Department of the Treasury and Brand USA signed a Memorandum of Understanding containing agreed upon policies and procedures wherein submissions for Federal matching funds would be processed and funds dispersed within 45 days.

However, some other Federal laws (e.g. the Anti-Deficiency Act) create challenges to the full implementation of this portion of the TPA, specifically that the 70/30 in-kind to cash ratio required in the TPA must be constantly maintained with each and every matching fund submission and that the matching fund requests submitted by Brand USA must have documented attestation in advance of matching funds being released. Subsequently, it has been the interpretation of the Department of Commerce’s legal counsel that the legal authority does not exist to exercise the Secretary’s ability to transfer funds based upon estimates. As it would streamline Brand USA’s ability to implement global marketing programs with scheduled transfers of funds, enhancing the predictability of cash flow for Brand USA is imperative.

Recommendation: With the passage of the Travel Promotion, Enhancement, and Modernization Act of 2014, we recommend that the Secretary request a review of previous legal interpretations regarding the authorization of the transfer of funds from the Travel Promotion Fund to Brand USA on the basis of estimated matching fund submissions and the current Memorandum of Understanding among the Department of the Treasury, the Department of Commerce and Brand USA to determine if the authority for making such transfers now exists.

The Travel Promotion Act is silent on the procedures for determining the fair market value of the projects submitted by Brand USA when requesting matching funds from the U.S. Government, so a process has been developed and implemented by the Department of Commerce and Brand USA that requires both parties to attest to the valuation of each element of every matching fund submission. Commerce’s internal process is estimated to involve 14 staff – managers, accountants, lawyers, executives and others - investing approximately 1000 hours in FY15 reviewing requests from Brand USA. In addition, the current matching fund submission procedures also requires Brand USA to hire third party vendors to attest to the fair market value of various in-kind contributions (at an estimated annual cost of \$500,000) before requests are submitted. However, the Travel Promotion, Enhancement, and Modernization Act of 2014 requires the Secretary to appoint members to the Brand USA Board of Directors who possess professional experience and acumen involving corporate finance and audit functions. This new requirement on both the Secretary and the Brand USA Board of Directors increases governance

¹ PL 111-145 Sec. 9(d)(2)(B)

and creates the opportunity to revisit current policies, which are proving burdensome and inefficient and creating unpredictability in cash flow.

Recommendation: In light of the increased governance requirements placed upon the Department of Commerce and the members of the Brand USA Board of Directors, we recommend that the attestation of fair market value of the elements of each matching fund submission remain the responsibility of Brand USA and that the Department of Commerce implement a system of random checks/audits throughout the year. We further recommend that Brand USA develop an internal review and approval process for matching fund submissions that meets the standards of review agreed upon with the Department of Commerce and adopted by the Brand USA Board of Directors.

By instituting these recommendations, the Department of Commerce and Brand USA can consistently meet the agreed upon 45-day timeline for funds disbursement and gain greater certainty over cash flow/timing.

RECOMMENDATIONS REGARDING POLICY GOVERNING MATCHING FUND REQUESTS

Cash

The Travel Promotion Act of 2009 and the Travel Promotion, Enhancement, and Modernization Act of 2014 reference “money” in only one place - “(B) Goods and Services – For the purpose of determining the amount received from non-Federal sources by the Corporation, *other than money-*” (emphasis added)² - and the statement specifically excludes it from the conditions set forth in the section of the law. In addition, every time the word “contribution” is used in either the Travel Promotion Act of 2009 or the Travel Promotion, Enhancement, and Modernization Act of 2014, it is always in conjunction with word “in-kind.”

At present however, the U.S. Government has interpreted “contributed” to mean “donated” – even in terms of cash. Therefore, in order to be eligible for Federal matching funds, the current policies governing matching funds submissions state that cash can only be provided by a partner to Brand USA via a Letter of Agreement (LOA) or paid as a sponsorship in which the payor receives only acknowledgment or other benefits of minimal value. As a result, cash contributions cannot be tied to a specific promotional activity – only non-binding and broad outlines may be stated in the LOA – and the marketing departments of Brand USA’s industry partners find it difficult, if not impossible, to tie those investments to a demonstrable ROI. Further, some government organizations responsible for marketing destinations (e.g. state tourism offices) are prohibited from making “donations,” and cannot sign the aforementioned LOA. In fact, at a recent meeting of the National Council of State Tourism Directors, a dozen state tourism directors in attendance said they were advised by their legal counsel against signing such a non-binding LOA. This serves as a disincentive to the very partnerships the Travel Promotion Act was designed to encourage.

The Internal Revenue Service itself primarily references contributions as either contributions to a retirement fund, other deferred investment or as contributions to charity. Per the IRS’s

² PL 111-145 Sec. 9(d)(3)(B)

Publication 526³, a charitable contribution is a “donation or gift to, or for the use of, a qualified organization. It is voluntary and is made without getting, or expecting to get, anything of equal value.” They further define “Qualified organizations” as including “nonprofit groups that are religious, charitable, educational, scientific, or literary in purpose, or that work to prevent cruelty to children or animals.” In addition, Black’s Law Dictionary defines contribution more expansively as, “The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share.”⁴ This definition recognizes that “contributions” can be and are legally made among and between parties in situations devoid of charitable conditions, making the condition that contributions to Brand USA must be made as a “gift” or “...without getting, or expecting to get, anything of equal value” debatable.

In summary, funds from non-Federal sources to Brand USA are not held to the charitable contribution standard but are nonetheless interpreted in a way that inhibits the ability to track results, act as a steward of public and private dollars and engage the partners necessary to promote all 50 states, 5 territories, and the District of Columbia and rural and urban areas.

Recommendation: Amend current policy and recognize cash as a commitment to Brand USA from non-Federal sources, eligible for federal matching funds and able to be tied to specific programs and deliverables of clear and demonstrable contribution to Brand USA and benefits to both the nation and the partner, or amend the current LOA to enable partners of Brand USA to identify specific elements of Brand USA’s business plan and details regarding their and the respective partners deployment of those same elements. Brand USA’s business plan, including goals, objectives and tactics, is adopted by the Brand USA Board of Directors (who are all appointed by the Secretary) and reviewed by the Secretary prior to implementation.

Co-op Treatment of In-kind Media

The Travel Promotion Act of 2009 and the Travel Promotion, Enhancement, and Modernization Act of 2014 are silent on the valuation of contributed in-kind media. It is the position of the Department of Commerce that current law and the current policies governing matching fund submissions allow contributed in-kind media to either contain Brand USA’s brand message exclusively, or to be cooperatively co-branded with U.S. travel and tourism industry businesses, organizations and destinations and receive 100% of the value of the contributed media in those circumstances where Brand USA manages the content of the contributed media space (not circumstances where their logo is placed on a partners advertisement). For example, if Brand USA receives \$100,000 in contributed media space from the London Times and elects to co-op the contributed media with Lee County, Florida (see attached example at the conclusion of letter), Brand USA would still be entitled to 100% of the value of the contributed media deployed in the marketing effort because Brand USA managed the content of the contributed media space. This is critically important, because when global companies (e.g., Thomas Cook, BBC) provide Brand USA with in-kind assets that could, in turn, be deployed as cooperative

³ Department of the Treasury, Internal Revenue Service, Publication 526, *Charitable Contributions*, Cat. No. 15050A

⁴ *Canosia Tp. v. Grand Lake Tp.*, SO Minn. 357, S3 N. W. 340; *Dysart v. Crow*, 170 Mo. 275, 70 S. W. 0S9; *Aspinwall v. Sacchi*. 57 N. Y. 330; *Vandiver v. Pollak*, 107 Ala. 547, 19 South. 180; 54 Am. St. Rep. 11S

opportunities with U.S. travel and tourism industry partners, the result is Brand USA being more successful in its ability to represent and add value to all 50 states, the District of Columbia, and the territories – a key tenet of the Travel Promotion Act.⁵

Recommendation: The purpose of this specific recommendation is to clarify and affirm current policy to the benefit of all parties. Therefore, our recommendation is to continue the requirement that Brand USA submit documentation attesting to the value of the contributed in-kind media and maintain the policy that Brand USA may then deploy the contributed in-kind media in a manner consistent with their adopted business plan.

Determination of Fair Market Value for Media Space

Under current policies, Brand USA must retain a firm experienced in the field of media auditing to determine the fair market value of in-kind contribution of advertising media space wherever invoice support is unavailable. However, when media is being contributed, not purchased, a standard industry practice to determine the value of the contributed media space is to use that media outlet's published rate card. Published rates take into account reach, frequency, seasonality, size, position and other relevant information pertaining to fair market value. Brand USA spends between \$400,000 and \$500,000 annually to administer its obligations under the matching funds process. Adopting the recommendation will strengthen governance as it replaces the use of a firm to estimate fair market value of contributed media space, with published rate cards that provide standardized and transparent valuations of the same media space.

Recommendation: Amend the current policies and guidelines to allow a media outlet's published rate card to establish the fair market value of in-kind contributed media space.

Thank you for the opportunity to provide our observations and recommendations on maximizing the efficiency of the process for submitting, reviewing and vetting the matching fund requests from Brand USA to the Department of Commerce. It is a system that has been functioning well, thanks to the professionalism and dedication of the Department of Commerce and Brand USA staff and leadership. Therefore, our goal is to maintain the standards of good governance as we identify places where we can gain efficiency and effectiveness. This is an issue that is important to all sectors of the travel and tourism industry as we seek to amplify the public-private partnership afforded the industry through the passage of the Travel Promotion Act and attain the goals contained in the National Travel and Tourism Strategy.

We have come far in raising awareness of the important role travel and tourism plays in growing travel exports and generating employment. Yet, we remain unwilling to rest on our laurels. There's still much to be done to build momentum for the American economy and create good jobs for Americans. We look forward to moving ahead together with you.

⁵ PL 111-145-MAR.4, 2010; SEC. 9 (b)(5)(A)(iv)

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "sgilliland".

Sam Gilliland
Chair

A handwritten signature in cursive script, appearing to read "jsprouls".

John Sprouls
Vice Chair

A handwritten signature in a bold, blocky font, appearing to read "TODD DAVIDSON".

Todd Davidson
Co-Chair, BrandUSA Subcommittee

ES IST BEEINDRUCKEND, WIE VIELE SCHÄTZE
SIE HIER IN HÄNDEN HALTEN KÖNNEN.

Finden Sie Ihre Insel

UMGEBEN SIE SICH MIT DEN DINGEN,
DIE WIRKLICH VON BEDEUTUNG SIND.



Entdecken Sie Ihre persönliche Lieblingsinsel mit unberührten weißen Sandstränden und über 400 Muschelarten. Das alles liegt nur wenige Minuten vom Southwest Florida International Airport entfernt, am warmen Golf von Mexiko. Unter FortMyers-Sanibel.com/de finden Sie weitere Informationen sowie Ihren persönlichen Lonely Planet Guide zum Download.



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