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Statutory Authorities Are Mere Table Stakes

BY FACTORY SETTINGS • FACTORY SETTINGS • 8 OCTOBER 2026

While my CHIPS friends and colleagues (and wife, Sara) were executing a generational industrial policy program at the Department of Commerce, I was building the Tech Hubs program, one of the “& Science” programs in the CHIPS & Science Act. Tech Hubs aimed to build durable industrial production capacity for critical technology products and services across domains such as **precision fermentation, quantum chip packaging, and minerals and materials processing**. Rather than allowing production capacity for technologies invented here to grow abroad, Tech Hubs invested in infrastructure, workforce development, technology advancement, capital formation and deployment, and institutional coordination.¹

Sara and I were three floors apart in the Herbert C. Hoover Building during our day shift; after our commute home and dinner, we often found ourselves on our laptops across the dinner table or sitting on the couch for the night shift. Having both been in government for over a decade, we’d always talked about work, but working on industrial policy in the same organization at the same time, we got to know a lot more about our respective programs and organizations. While our programs were both authorized by the same legislation and both housed within Commerce, they were otherwise very different.

Watching Sara implement CHIPS with the benefit of the program’s many statutory advantages, I won’t lie and say I didn’t covet them for Tech Hubs. As the investments of these programs ripen over the next few years, we’ll be able to evaluate how implementation advantages translate into impact. But the real differentiator wasn’t the tools so much as the “we’re going to get this done” culture that was instilled with CHIPS’s very first hire. And while you can’t requisition organizational culture from Congress, Congress can help shape an organization’s ethos.

Comparing toolkits

The CHIPS Program Office (CPO) and Tech Hubs operate with different equipment.

Tech Hubs has far less funding (to date, a bit over \$1 billion of its authorized \$10 billion has been appropriated, compared to CPO's \$39 billion). Despite both being within Commerce, our organizations are very different. The Economic Development Administration (EDA), which houses Tech Hubs, is small and grant-centric.² It relies heavily on Commerce's shared services, with some internal infrastructure that serves as an interface. By contrast, CPO's home of NIST is big, independent, and has its own robust mission-support functions.³

Through the complicated negotiations over the CHIPS & Science Act, Congress gave CHIPS a lot of statutory advantages that the "& Science" programs didn't get, including other transaction authorities, flexible hiring authorities, and a \$780 million operating budget. Early organizational decisions helped, too: CPO was stood up inside NIST but as an independent organization with a greenfield culture. Tech Hubs was in many ways the opposite. We could only deploy funding as grants or cooperative agreements (which are effectively grants with more government direction and oversight). We had a limited operating budget and, despite being set up as a separate office within EDA, were bound by its culture and practices.

Statutory authorities are necessary (even if often insufficient)

To this day, Tech Hubs only deploys funding through grants, which are a great tool in the right context, but come with extensive rules that require expertise to navigate. Unlike more flexible discretionary funding vehicles like OTs, which CHIPS had access to, grants are governed by 2 C.F.R. 200 — the most recent version of which clocks in at 150+ pages of the full 750-page regulatory title on federal financial assistance. That's less cumbersome than the 2000+ pages of the FAR, but 2 C.F.R. 200 is not a rulebook to shrug off. Many companies don't have much (if any) experience with grants, which makes negotiating and managing them unfamiliar and challenging.

Tech Hubs has a small statutory matching requirement⁴ and we designed the program's evaluation criteria to highly reward quantifiable outside commitments.⁵ But we didn't have the ability to use returnable capital that we could redeploy into future projects, nor could we use loan guarantees or other instruments to directly buy down risk. When Congress creates authorities, the choice of embedded tools has both policy and implementation implications. I'd argue that Congress gave Tech Hubs an extremely limited toolkit — industrial policy programs that fund highly diverse workforce, business and entrepreneur, technology, and infrastructure development projects⁶ executed by nearly any kind of entity⁷ need the financial flexibility to match that project diversity. But having the right authorities is mere table stakes.

Hiring authority ≠ hiring ability

As the first Tech Hubs employee, I was building a team entirely from scratch, and I knew we'd need to blend government talent with industry expertise. Grantmaking requires grant management staff. But our mandate included:

“enabl[ing U.S.] leadership in technology and innovation sectors critical to national and economic security; . . . promot[ing] increased geographic diversity of innovation across the United States; . . . support[ing] the modernization and expansion of United States manufacturing based on advances in technology and innovation; . . . [and] improv[ing] the pace of market readiness, industry maturation, and overall commercialization and domestic production of innovative research . . .”⁸

This would need some additional expertise, some of which we brought on via **contracts**, which gave us access to a wide range of science and technology experts. But some of the requisite expertise needed to be in-house, including coalition management and governance, investment and project oversight, technology commercialization, and industrial cluster development.

To bring on this talent, we needed to rely heavily on our HR mission support team. Hiring outside talent with no prior federal government experience is often the most challenging kind under Title 5, which typically governs the hiring of federal employees.⁹ But, fortunately for us, Tech Hubs had broad statutory authority to hire outside the restrictions of Title 5. The broad authority alone, though, isn't sufficient to create and execute a process to hire people into roles—we needed our mission support team to work with us to hire outside the typical rules.

Our authority to hire was stated plainly (or at least as plainly as laws tend to state these things) in the first Tech Hubs appropriation: “the Secretary of Commerce is authorized to appoint and fix the compensation of such temporary personnel as may be necessary to implement the requirements under this heading in this Act, without regard to the provisions of Title 5, United States Code, governing appointments in competitive service[.]”¹⁰

This hiring authority expanded our toolkit. Not only could we hire into the competitive service using the “regular” Title 5 rules, but we also could hire without regard to those rules (though those hires would be “temporary personnel” and without the full protections of the competitive service). Using both these tools, we could bring on the right mix of industry and public sector staff to stand up and administer the program. Skirting Title 5 meant that industry hires could avoid Byzantine preference rules and bureaucratic résumé keyword search reviews and more easily get competitive pay. They likely wouldn't value the protections and guarantees offered by Title 5 if they planned to return to the private sector after a few years anyway.¹¹

Despite the formal exception from the typical rules, it still took seven months to make our first hire. Internal culture and norms meant we were forced by staff and leadership alike to jump through nearly every Title 5

hoop to hire anyone. Our HR mission support team wasn't primed to implement a new authority, and defaulted to existing processes. While CPO was able to benefit from NIST's experience with novel and forward-leaning hiring, EDA had little. Their standard practice was to bring in *anyone* from outside government at the lowest possible pay level. This made it difficult to attract and retain high performers from high-paying industries, even when selling them on the mission. Moreover, entrenched habits can discourage civil servants from staying in government because this can have career-long salary impacts. Within the strictures of Title 5, once a hire's grade and step are set, it's difficult to reward performance with meaningful pay raises. This is particularly true for civil servants in the General Schedule (GS) system that EDA uses to determine pay.

One contributing factor was EDA's strong culture of compliance. There were myriad forms, systems, and processes, but it was not always clear how they served underlying rules and regulations. Any request to try something different was often met with a flat "no" that could only be overcome through a combination of escalation and legal and regulatory spelunking. The legislators who tried to give us hiring authorities would likely be unhappy to learn that their efforts to help stand up a complex program were unsuccessful and that we still had to follow the rules they tried to spare us from.

Of the many hiring battles I fought, one is particularly memorable. Government salaries, especially at the "step 1" level that most new-to-government GS employees are hired into, aren't always competitive with salaries in the private sector domains from which we were hoping to hire. As we identified candidates, several asked to negotiate pay. Our HR team told me there was only one exception to the "step 1" default: we could match the salaries of candidates who could produce paystubs or other evidence that they were currently being paid (or had a firm offer for another job that would pay) more than step 1.12

That seemed like a narrow exception and one that would exacerbate pay discrepancies. The fact that there was an exception at all led me to investigate whether there were others. During that investigation, I came across 5 C.F.R. 531.212, the "Superior qualifications and special needs pay-setting authority." At the time, the regulation laid out ten ways that you could substantiate hiring someone from outside government at a rate higher than step 1 of the position's GS level, one of which was demonstrating higher current pay.¹³ The nine other factors were wide-ranging and even included the blanket "[o]ther relevant factors." I became an expert at writing "superior quals" memos, which were the mechanism for laying out a candidate's "superior qualifications" against the factors set out in the regulation.¹⁴ Writing these memos was one of dozens of hiring steps that often took days, if not weeks, to get all the required approvals. While we did make use of these regulatory flexibilities, hiring was an extensive process. From classifying a position to publishing a job advertisement, to evaluating candidates to getting background checks processed, the OPM targets for hiring timelines that CPO beat were far-off dreams for us.

Beyond the institutional inertia, I noticed an understanding of fairness in hiring as the highest priority and requiring "treating everyone the

same,” which could come at the cost of program objectives. Our mission support team (staff and leadership) was resistant to offering new hires higher salaries. Regardless of the factors explicitly laid out in regulation, it was more “fair” to start everyone at the lowest pay possible, regardless of their skills and experience and regardless of the hiring organization’s needs.

A statement of intent strengthens authority

Why were we constrained to operate within Title 5 when we were explicitly authorized by Congress to go around it? Part of it was the absence of a get-it-done and get-to-yes culture. Mission support organizations can get stuck in alternate realities of rules and incentives that aren’t aligned with the mission, or even distort it — I witnessed several hiring actions for which there was an internal candidate that was widely expected to (and eventually did) get the job, but agency leadership insisted on a full and open competition, which inevitably (a) took way longer and (b) pissed off all the people who thought they had a chance at the job but then felt like they had been rug-pulled when the expected candidate got it.¹⁵

But Congress has a lever here, and one that I think has more promise than oversight hearings, committee report admonitions, and the threat of funding recissions or reduced appropriations. Congress can tell the agencies *why* they’re getting an authority. Going to HR, lawyers, and even sympathetic leadership to say, “Hey, I have this authority, and using it will help me achieve my mission” isn’t fruitless, but it has little weight when there is no statement of intent in the statute. Bureaucracies and cultures have immune systems that attack anything new.

For Tech Hubs, Congress could have suppressed that immune system by wording our hiring authority as follows:

*To hire the best talent as quickly as possible and on terms competitive with private industry and without the long timelines typical of competitive hiring, the Secretary of Commerce is authorized to appoint and fix the compensation of such temporary personnel as may be necessary to implement the requirements under this heading in this Act, without regard to the provisions of title 5, United States Code, governing appointments in competitive service.*¹⁶

An explicit statement of intent makes the purpose of a mission clear to the bureaucrats running it. It’s not a panacea — there are still real legal and process questions to address, and frontline mission support staff can’t be trained to implement a new process overnight. But these few extra words better equip program implementers for success. I suspect that those drafting and advocating for industrial policy programs aren’t particularly invested in Title 5’s statutory, regulatory, and process spaghetti, which does not directly enable — and often stands in the way of — program objectives.

Sara and I worked through a lot of problems on the night shift. One thing I learned: it’s as important that an organization be open to doing things differently as it is to have the authority to do so. There are certainly

more extensive state capacity reforms and improvements that are also necessary, but a clear, shared understanding of the “why” is a powerful driver of action.

1

While Tech Hubs had some Congressional direction on which technologies to focus on, we were left with the challenge of prioritizing across domains (some aspects of which are addressed in prior Factory Settings pieces). The program’s statutory authorization required us to consider several factors when evaluating proposals, the first of which is “the potential . . . to advance . . . technologies in a key technology focus area [KTFA], as described [42 U.S.C. § 19107] or other technology or innovation sector critical to national security and economic competitiveness.” The KTFAs listed in 42 U.S.C. § 19107(c) include domains ranging from AI/ML to semiconductors to biotech and disaster prevention. We included an illustrative list of projects in the NOFO at A.I.c.i(4) and put the onus on applicants to make the case for their chosen technology, and we assessed its alignment with the ten KTFAs and its criticality.

2

The US Economic Development Administration (EDA), which had been focused on helping economically distressed communities since its Great Society-era founding in 1965, had only begun to focus on innovation- and technology-centric, distress-agnostic growth with the enactment of the America COMPETES Reauthorization in 2014. In recent years, EDA has had at most a few hundred employees and typical regular annual appropriations of about \$400 million. EDA has also frequently received significant supplemental appropriations starting in FY18, but those are unpredictable and don’t fund permanent institutional capacity.

3

As Sara has written, NIST has extensive institutional capacity: “NIST had the most competent operations team in the Commerce Department. Its senior ops leaders were experienced and savvy government operators. They understood the priority of our mission and helped accelerate our processes.”

4

In most cases, the statute governing Tech Hubs requires the applicant to provide 10% of the total project cost from non-Federal funds for an initial award and 25% for any subsequent awards. All funding to date falls within Hubs’ initial awards.

5

Our NOFO indicated that we would “assess the commitments’ relevance to and alignment with the Hub’s strategy and component projects, the magnitude or significance of the commitments, and their expected and likely impacts.” This discretion helped us shape and select projects that resulted in 11x+ leverage within a year for the first round of funded implementation projects. The most recent NOFO similarly describes different kinds of commitments, evaluated commitments as elements of multiple merit criteria, and included a list of examples.

6

15 U.S.C. § 3722a(f)(2)

7

15 U.S.C. § 3722a(c)

8

15 U.S.C. § 3722a(b)(1)

9

Title 5 of the Code of Federal Regulations implements Title 5 of the United States Code, which establishes hiring rules for the civil service. Statutory authorities can allow an agency to sidestep these rules; examples include CHIPS 25, this personnel management authority, and appropriations-specific authorities like this one EDA had for administration of the CARES Act.

10

Tech Hubs funding was detailed in the 2023 Consolidated Appropriations Act, 136 Stat. 4459, 5204. The unusual (read: sloppy) drafting that put the operational expense transfer and hiring authorities in between the disaster assistance and Tech Hubs supplemental appropriations also resulted in several weeks of debate to reach agreement that those authorities applied to the Tech Hubs program. Absent that, we would've been in a lot worse shape and had \$13.7 million less in operating expenses (i.e., effectively zero dedicated funding) available to implement the program.

11

We weren't advanced enough to leverage this cheat sheet for attracting private sector talent.

12

"Match" is slightly imprecise because GS employees' salaries are rigidly set (see, e.g., the Washington, DC salary table for 2026), so the HR team's practice was to approve the step that was minimally above the candidates current salary. For example, if the candidate was making \$90,000 per year and had been selected for a GS-11 job in DC, they could negotiate for GS-11 step 3 (\$91,145, a 1.27% pay raise) instead of GS-11 step 1 (\$85,447, a 5.06% pay cut). I would argue that acquiescing to a paltry raise after offering a pay cut does not appeal to high performers considering private sector positions.

13

During the primary hiring sprint for Tech Hubs, the 2013 version of § 531.212(c) was in effect, so I primarily cite to it. However, the Office of Personnel Management was in the process of amending the regulations to explicitly prohibit considering a candidate's salary history in making a pay rate determination through several Executive Orders and related rulemaking (E.O. 14035 , E.O. 14069 , 88 FR 30251, and 89 F.R. 5737). In a subsequent wrinkle, GSA issued a directive that declines to apply the 2024 updates to the superior qualifications factors for GSA's salary determination process in response to E.O. 14151 and E.O. 14148, although OPM has not moved to rescind the rule.

14

I also became an expert at writing "creditable service" memos so that experienced professionals weren't penalized with leave accrual rates that apply to entry-level employees. While federal paid time off is fairly generous, new federal employees typically accrue four hours of annual leave

(i.e., discretionary vacation time) every two-week pay period for their first three years of service. After three years and before fifteen years, employees typically accrue six hours per pay period; at fifteen years and beyond, it's eight hours. Agencies have the discretion to give new employees credit for their prior relevant work experience — another tool to attract talent that was unadvertised and opaque.

15

This is not to say that the competitive hiring process was a sham or that anyone did anything illegal. Rather, there's a matter of prioritization. If you have a mandate to execute with speed and you have the legal authority to do it, you need to make a decision: do I prioritize my mandate for speed, or do I prioritize a process that intends to be completely fair (even if it isn't) at the expense of speed? If you're 80% certain you know the outcome of a hiring process, is it worth several months to run that process? Sometimes, yes; other times, definitely not.

16

Congress could arguably also use clearer language and just say "To hire the best talent as quickly as possible and on terms competitive with private industry, the Secretary of Commerce is authorized to hire temporary personnel to implement the Tech Hubs program without regard to the provisions of Title 5 of the United States Code," but plain language legislation is a whole separate matter.