

**NIH Ethics Policy:
Official Participation in a Leadership Position of a
501(c) Nonprofit Professional Organization**

Introduction

Official duty activities conducted by NIH employees should support, fulfill, and promote the NIH mission, and therefore serve in the interest of the agency and Government. NIH employees engage in a variety of official duty activities, and such activities may involve outside organizations who share interests with NIH. An NIH employee may participate as part of his or her official duties with an outside organization whose interests and mission aligns with the NIH mission as long as requisite agency approval is obtained, and the activity complies with legal and policy requirements.

The purpose of this memorandum is to provide policy guidance to all NIH employees regarding a regulatory change, which removes a legal impediment that often prevented federal employees from serving in leadership positions¹ of 501(c) nonprofit² professional³ organizations as part of their official government duties. Despite the legal change, NIH employees will still need to secure approval to be appointed in their official capacity to participate in such leadership positions of nonprofit professional organizations as an official duty activity. An employee's leadership position in a nonprofit professional organization may be considered as an ancillary assignment, in addition to his or her primary federal position and duties. An employee will exercise caution to avoid any possible appearance of bias or preferential treatment towards the 501(c) nonprofit professional organization.

¹ For purposes of this policy document, a leadership position may include the position of officer, director, trustee, or other position or role having the same legal responsibilities and characteristics. Service in a non-fiduciary capacity, i.e. advisory board, is not covered by this policy but is addressed in the existing official duty [guidance](#).

² To be eligible for approval under this policy, the organization must be a 501(c) nonprofit professional organization that receives tax-exempt status under any subsection of section 501 of the Internal Revenue Code. An eligible organization may include a professional association, society or other 501(c) nonprofit professional entity.

³ Within the context of this policy, "professional" involves the skills of a profession, defined in 5 C.F.R. 2636.305(b)(1) as, "a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods."

Background and Scope

Historically, there have been three ways in which an NIH employee could engage in a leadership role with an outside organization: 1) as an approved official duty, 2) as an approved Federal Liaison, or 3) through an approved outside activity. However, there were significant legal obstacles that made it difficult for an employee to serve in a leadership position of a 501(c) nonprofit professional organization as part of his or her official NIH duties.

A regulatory change has removed the main legal barrier to serve in a leadership position of a 501(c) nonprofit professional organization as an official duty activity. Although a legal barrier has been lifted, an employee's appointment to participate in a leadership position of a 501(c) nonprofit professional organization shall be subject to restrictions, limitations, and managerial considerations. Furthermore, the new exemption does not remove all sources of real or potential conflicts that may arise from an assignment to serve in a leadership role for a 501(c) nonprofit professional organization. Employees wishing to take on such responsibilities shall consult with their ethics officials to assure that no other issues preclude such an assignment.

It is important to note that the option to serve in a leadership position of a 501(c) nonprofit professional organization as an approved outside activity, performed in the employee's personal capacity, remains an option for the employee. The rules concerning outside activities still apply, including receiving prior approval via the Request for Approval of Outside Activity, HHS 520. This option would not preclude an employee who engages in an outside activity from obtaining a limited authorization that would permit him or her to make a presentation about his or her NIH work at a conference sponsored by the nonprofit with whom he or she serves in his or her personal capacity.

Official Duty Policy

Consistent with the general NIH official duty [guidance](#), the NIH supervisor and the Deputy Ethics Counselor (DEC) have the authority to approve an employee's official duty participation with an outside organization. The employee, supervisor, and the employee's DEC will consider the nature and scope of the proposed activity and determine the optimal means of participation (see attached Comparison Chart).

Prior to assuming or participating, or agreeing to participate in a leadership position (i.e. as an officer) of a professional nonprofit organization as an official duty activity, the official duty activity shall be documented in an official duty activity memorandum (see

attached ODA memo). The employee shall receive the attachment to the ODA memo from his or her DEC that provides important ethics counseling to the employee regarding his or her participation (see attached Employee Guidance Notice), and the employee will acknowledge in writing receipt of the ethics counseling. The employee shall be responsible for informing the 501(c) nonprofit professional organization to which he or she is assigned of such restrictions and limitations.

The ODA memo shall describe the 501(c) nonprofit professional organization, the responsibilities of the position the employee will assume in the 501(c) nonprofit professional organization, and how the employee's NIH duties relate to the service in the position. In addition, the ODA memo will describe the benefits to the government of assigning the employee to the position in the 501(c) nonprofit professional organization. Finally, it will list any restrictions and/or limitations as to the employee's participation (Employee Guidance Notice). The ODA memo shall be signed by the employee and the employee's supervisor, acknowledging and approving the employee's assignment to the 501(c) nonprofit professional organization. The employee's ethics office will review the ODA memo. An analysis will be performed to determine whether the employee has any real or potential conflicts with the 501(c) nonprofit professional organization. Any real or potential conflict that is identified must be resolved before the ODA memo is approved by the employee's DEC. Once concurrence is received from the NIH Ethics Office and the memo is signed, the ODA will serve as agency approval of the assignment.

The employee and supervisor shall be mindful of the general restrictions applicable to all official duty activities with outside organizations, including all applicable limitations and considerations as described in the attached Employee Guidance Notice.

For more information, contact your NIH [ethics office](#).

Attachments:

- 1) Participation with Professional Nonprofit Organizations Comparison Chart
- 2) Employee Guidance Notice
- 3) Official Duty Activity Memorandum: Request for Approval of Participation in a Leadership Position of a 501(c) Nonprofit Professional Organization

NIH Employees' Participation with 501(c) Nonprofit Professional Organizations Comparison

	Official Duty Participation		Outside (Personal) Activity
	Federal Liaison	Leadership Position (e.g. Officer)	
General Considerations	Non-voting, non-fiduciary role. May <u>NOT</u> participate in the organization's business affairs, lobbying, fundraising, or political activities.	Voting participation is permitted, with limitations. May <u>NOT</u> participate in the professional 501(c) nonprofit organization's business affairs, lobbying, fundraising, or political activities.	<p>Outside activities with certain organizations are not permissible.</p> <p>Certain provisions of the Hatch Act apply while "on" and "off" duty.</p> <p>Contact your ethics office to request assistance.</p>
	The employee may not make a representation on behalf of the nonprofit organization to the Executive Branch unless part of regular official duties to do so.		
When is this role appropriate?	When an NIH representative to the nonprofit organization is needed, i.e. spokesperson, but full voting membership is not appropriate.	When the organization is a 501(c) nonprofit professional organization, and the participation advances NIH programmatic or policy goals and voting participation is essential to achieve joint aims.	When participation is outside the scope of NIH job duties, or the position requires the employee to fully participate in business decisions of the organization.
May the employee's NIH title be used?	Yes	Yes	May be permitted in limited circumstances. Consult with your ethics office.
May NIH time and resources be used?	Yes	Yes	No. The HHS "minimal use" policy does not apply to personal, outside activities.
May compensation be accepted by the employee?	No compensation may be accepted.	No compensation may be accepted.	Yes, with prior approval of an outside activity request (HHS 520). Note: Receipt of compensation from a private foundation may be problematic.
May travel expenses be accepted?	NIH may either pay for the travel expenses or accept travel expenses pursuant to HHS travel policy.	NIH may either pay for the travel expenses or accept travel expenses pursuant to HHS travel policy.	Travel expenses may be accepted by the employee; not the agency. If the organization is a private foundation, additional restrictions apply.
Recusal	If approved to engage in an official duty activity, the employee may not participate in a particular matter involving the nonprofit that will affect his own and others' imputed financial interests. Recusal is required. Contact your ethics office to request assistance.		If approved to engage in a personal outside activity, the employee must recuse from NIH official matters involving the outside organization. Contact your ethics office to request assistance.
What approval is required?	Supervisor	Official Duty Activity Memo approved by Supervisor and Deputy Ethics Counselor (DEC) with concurrence from the NIH Ethics Office (NEO)	Request for Approval of Outside Activity (HHS 520) approved by Supervisor, DEC, and NIH Ethics Advisory Committee (NEAC), when applicable.
Links to resources and	1) Official Duty Information		1) Outside Activity

forms	2)	Hatch Act Information	Information
	3)	Anti-Lobbying Act Information	2) Hatch Act Information

Questions? Contact your [ethics office](#).

TO:

THROUGH:

FROM:

SUBJECT: Request for Approval of Participation in a Leadership Position of a 501(c) Nonprofit Professional Organization

This is to request that the following activity be approved as an official duty activity. I understand that no honorarium or other remuneration may be accepted. I will observe all applicable ethics rules, regulations, and policies while on duty.

Organization:

Address:

Nature of Activity:

Time Frame Involved:

Estimated Time Involved:

Travel Expenses Paid by:

Benefit to the Government:

Yes	No	N/A	An HHS 348, sponsored travel request, is being submitted separately for approval.
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Yes	No	N/A	A copy of the nomination letter, bylaws, and/or other supporting documentation are attached.
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By signing below, I acknowledge receipt of the attached notice and my responsibility to comply with agency ethics and policy requirements. I will inform the organization of the stipulations that apply to my participation.

Recommendation of Supervisor:

_____ Approve

_____ Disapprove

Comments:

Recommendation of Ethics Office:

_____ Concur

_____ Non-concur

Comments:

Concurrence from the NIH Ethics Office:

_____ Concur

_____ Non-concur

Comments:

Decision by Deputy Ethics Counselor or Other Approving Authority:

Prior to granting approval for the activity, I have assured that no real conflicts exist, any potential conflicts have been resolved, and the attached notice has been delivered to and discussed with the employee.

_____ Approve

_____ Disapprove

Comments:

Attachment:

[Employee Guidance Notice regarding Official Participation in a Leadership Position of a Professional 501\(c\) Nonprofit Organization](#)

Employee Guidance Notice:

Official Participation in a Leadership Position of a 501(c) Nonprofit Professional Organization

Prior to assuming or participating in a leadership position¹ of a 501(c) nonprofit² professional³ organization as an official duty activity, the NIH employee shall receive ethics counseling regarding the restrictions, limitations and other considerations associated with his or her participation as an NIH employee, which are explained in this document. The employee shall obtain approval to participate from his or her supervisor and Deputy Ethics Counselor (DEC). It is the employee's responsibility to ensure that his or her duties and activities comply with the rules, that the 501(c) nonprofit professional organization is aware of any restrictions or limitations official duty participation may cause, and to seek guidance from his or her ethics official as necessary.

General Restrictions

The following restrictions generally apply to an NIH employee when serving a nonprofit professional organization in a leadership position as part of NIH official duties:

- The employee may not make a representation on behalf of the 501(c) nonprofit professional organization to the executive, legislative, or judicial branch. Examples of such matters include signing an application such as a request for funding that is submitted to the NIH for a conference grant or contacting the Internal Revenue Service on behalf of the organization regarding the organization's tax status or filing. 18 U.S.C. § 205.
- As with all other official duty assignments, the employee may not participate in any particular matter, including any matter which the employee is asked to work on while

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serving in a leadership position with the 501(c) nonprofit professional organization as an NIH official duty activity, that will affect his or her own financial interest, or those of certain other persons. Examples of such matters include seeking or negotiating employment with the 501(c) nonprofit professional organization while having an official duty assignment with the organization, considering an application from the employee's spouse for employment with the organization, or considering an application for an employee's spouse to receive an award from the organization. 18 U.S.C. § 208.

- The employee may not be paid by anyone other than the United States Government for performing his or her official Government duties. This includes any supplementation of salary, including personal reimbursement of travel expenses, officer bonuses, or the receipt of "perks" or other benefits that do not directly facilitate the official duty activity, from the 501(c) nonprofit professional organization, or any other person than the United States, for actions taken while serving in a leadership position of the nonprofit professional organization in his or her official NIH capacity. 18 U.S.C. § 209.

- The employee remains subject to the Standards of Conduct for Employees of the Executive Branch while serving the 501(c) nonprofit professional organization. As such, the employee would generally be prohibited from receiving gifts from the organization in which he or she serves, as the organization would be considered a prohibited source under 5 C.F.R. § 2635.203(d) unless an exception applies. For example, an exception exists for gifts, including meals, valued at \$20 or less, per source, per occasion, not to exceed \$50 in a calendar year from the same source. 5 C.F.R. § 2635.204(a).

- With limited exception, an employee is prohibited from fundraising on behalf of a 501(c) nonprofit professional organization in his or her official capacity. To avoid the appearance of preferential treatment, the employee should not participate in fundraising activities involving the organization to which he or she is officially assigned in a leadership position. 5 C.F.R. § 2635.808.

- The employee remains subject to the Hatch Act while serving in the 501(c) nonprofit professional organization. Thus, the employee may not engage in political activity – i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group – while the employee is on duty, including times when performing duties of his or her leadership role in the nonprofit professional organization. 5 U.S.C. 7324.

- The employee remains subject to the Anti-Lobbying Act and similar limitations included in appropriations bills while serving a 501(c) nonprofit professional organization in a leadership position. Thus, the employee may not lobby any federal, state, or local

government official on behalf of the organization while serving in a leadership position as an NIH official duty activity. 18 U.S.C § 1913 and applicable appropriations laws.

Limitations

The following activities, if applicable to the employee's NIH position and/or to his or her role in a leadership position of the 501(c) nonprofit professional organization, are also prohibited:

- The employee, while performing his or her official duties for NIH, is prohibited from preparing, presenting, or participating in agency determinations regarding requests for the 501(c) nonprofit professional organization to receive federal funds or other forms of federal support. For example, the employee may not work on or serve as an NIH spokesperson for a co-sponsorship agreement between the NIH and the organization to which he or she is officially assigned as officer, including the provision of behind-the-scenes assistance. Furthermore, the employee may not award grants, contracts, cooperative agreements, or other agency support, i.e. agency personnel or resources, to the nonprofit professional organization;
- The employee is prohibited from participating in the financial or personnel decisions of the 501(c) nonprofit professional organization such as salary increases or promotions for the organization's staff, investment decisions, and procurements;
- The employee is prohibited from participating in the development (and enforcement) of NIH policies or regulatory matters that would have a special or distinct effect on the 501(c) nonprofit professional organization. However, the employee may participate in matters that would affect the organization as a member of a class of similarly situated entities.

Additional Considerations

The following is a list of additional considerations that the employee and supervisor must take into consideration in deciding whether to undertake or assign the employee to serve a 501(c) nonprofit professional organization in a leadership role, and may wish to discuss with the organization, in consultation with the employee's ethics office, and/or other NIH offices as necessary:

- The mission and work of the 501(c) nonprofit professional organization shall be in concert with the mission of NIH.

- The 501(c) nonprofit professional organization has not taken any controversial positions that may be at odds with the NIH mission, programs, and/or policies and no controversial positions are currently being put forward by the organization. For example, if the organization mismanaged a conference grant, it might not be appropriate for an NIH employee to participate as an officer of the organization as an official duty activity.
- Availability of agency funds to support the employee's participation in the 501(c) nonprofit professional organization's matters, such as travel requirements, may need to be clarified or articulated. Employees and supervisors shall consider whether current travel policies regarding attendance at scientific meetings and/or budgetary limitations will impede the employee from fulfilling obligations of his or her position. If the employee receives approval to serve as an officer as an official duty activity, any travel to attend the organization's meetings and other events shall be done in his or her official NIH capacity pursuant to government and agency travel rules. The NIH may consider whether it wants to accept an offer of in-kind reimbursement from the organization for travel expenses incurred while the employee is performing his or her official duty activities. Under no circumstances shall support for travel be solicited.
- Length of service (some officer positions may be three terms: elect; current; and past).
- Time commitment of position in relation to other NIH duties.
- Concerns that official NIH appointment to the 501(c) nonprofit professional organization might give rise to a possible appearance of preferential treatment. Examples of such concerns include:
 - Other NIH employees already serve on the organization's Board in their official capacity;
 - Other NIH employees have requested to serve and been denied official appointments in leadership positions in nonprofit professional organizations; and,
 - NIH has other official relationships with the organization, e.g., joint sponsor of an event; grantee; contractor; collaborator.
- The documents a federal employee receives through the course of his or her official duties may be subject to disclosure under the Freedom of Information Act (FOIA). This may include documents the employee receives through his or her assignment in a leadership position to the 501(c) nonprofit professional organization.
- Board members are often excluded from certain of the organization's benefits and programs. Examples may include the organization's awards and honors.

- Past participation in a leadership position of the nonprofit professional organization as approved outside activity.
 - The employee may require ethics authorization from his or her DEC to continue the activity if it has been less than one year since the outside activity began.
- As with all official duty activities, the matters in which the employee participates while assigned to the nonprofit professional organization as an official duty fall within the purview of the post-employment restrictions.