

## Employee Guidance Notice:

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

Prior to assuming or participating in a leadership position<sup>1</sup> of a 501(c) nonprofit<sup>2</sup> professional<sup>3</sup> 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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<sup>1</sup> 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 guidance but is addressed in the existing official duty [guidance](#).

<sup>2</sup> 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.

<sup>3</sup> 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."

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.