

**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 positions<sup>1</sup> of 501(c) nonprofit<sup>2</sup> professional<sup>3</sup> 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.

<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 policy 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."

## **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 or for Senior Employees (a.k.a. Top 5) approved by the NIH DEC through the NIH Ethics Office. 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)	
<b>General Considerations</b>	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.		
<b>When is this role appropriate?</b>	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.
<b>May the employee's NIH title be used?</b>	Yes	Yes	May be permitted in limited circumstances. Consult with your ethics office.
<b>May NIH time and resources be used?</b>	Yes	Yes	No. The HHS "minimal use" policy does not apply to personal, outside activities.
<b>May compensation be accepted by the employee?</b>	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.
<b>May travel expenses be accepted?</b>	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.

<b>Recusal</b>	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.
<b>What approval is required?</b>	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.
<b>Links to resources and forms</b>	1) <a href="#">Official Duty Information</a> 2) <a href="#">Hatch Act Information</a> 3) <a href="#">Anti-Lobbying Act Information</a>		1) <a href="#">Outside Activity Information</a> 2) <a href="#">Hatch Act Information</a>

Questions? Call you [ethics office](#).