The NIH Ethics Advisory Committee

Public service is a public trust. It requires employees to place loyalty to the United States Constitution, its laws, and ethic principles above private gain. At the National Institutes of Health, the first priority is to uphold the highest standards for patient safety, ethical practices, and scientific excellence. NIH has stringent standards and transparent policies for managing potential conflicts of interest.

The NIH Ethics Advisory Committee (NEAC) is one part of a multi-faceted system of ethics at NIH. This system is governed by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), a government-wide system of ethics administered by the U.S. Office of Government Ethics, the Supplemental Standards of Conduct for employees of the Department of Health and Human Services, and by the directives of the Department of Health and Human Services Designated Agency Ethics Official.

Purpose

The purpose of the NEAC is to review and advise on proposed activities of NIH employees for which compensation will be received by the employee from an outside source. The NEAC is advisory to the NIH Deputy Ethics Counselor (DEC), who Co-Chairs the committee. With limited exception, the NIH DEC is responsible for providing final approval for the activities subject to the jurisdiction of the NEAC under all applicable rules.

Activities to be Reviewed

The NEAC will review certain proposed activities involving outside entities and/or for which the employee will receive compensation from a non-governmental source. These include outside activities for compensation, such as consulting, advising, giving lectures, providing professional services, or writing or editing books. These also include lectures associated with cash awards and prizes given to an employee by an outside entity in recognition of the employee's government service. For senior NIH leadership, specifically, IC Directors; IC Deputy Directors, Scientific Directors, Clinical Directors, and Extramural Program Directors; and OD senior staff (including all NIH Deputy, Associate, and OD Office Directors), all such activities will be reviewed by the NEAC, and the NEAC will provide a supervisory recommendation.

In addition, a subset of the activities defined above will be reviewed by the NEAC regardless of the position of the employee proposing the activity: 1) lecture awards where compensation equals or exceeds $2,500 (inclusive of travel and other benefits); 2) outside activities with biotechnology or pharmaceutical companies; 3) outside activities where total compensation is anticipated to exceed $10,000 or is expressed as a future income stream; and 4) activities for which the compensation proposed is stock, stock options, or other equity position. The NEAC will advise the NIH DEC in relation to these requests and submissions.

Committee Membership

The NEAC will by Co-Chaired by the NIH DEC and Deputy Director for Intramural Research and consist of ten other rotating members and two ex-officio members (the NIH OD Ethics Officer and a representative of the OGC Ethics Division.) The rotating members will be appointed by the Co-Chairs and will be representative of the categories of employees submitting proposed activities to the NEAC for review, including IC Directors and Deputy Directors, Scientific Directors, Clinical Directors, certain Extramural Directors, OD Senior staff, and others. Because the DEC will make the ultimate decision, the DEC will be a non-voting member of the NEAC.

Scope of Review

NIH has a two-pronged system of review and approval for every proposed activity for which the employee will receive compensation from a non-governmental source. The first prong is review and approval of the activity by the appropriate supervisory authority, to ensure that the proposed activity will not interfere with the employee's official responsibilities.

The second is the ethics review and approval, to ensure that the activity does not violate the Standards of Conduct, the Supplemental Standards, or any Departmental directive, and is otherwise consistent with the government-wide system of ethics. Authority for this approval lies with the applicable DEC. The NEAC is expected to review proposed activities and advise the NIH DEC on the decisions to be made. For employees and activities within the scope of the NEAC review, the applicable DEC is the NIH DEC. The NEAC review does not supplant the current review and approval process for other activities governed by the Standards of Conduct, the Supplemental Standards, or other agency directive.

Specifically, Committee members will review each proposed activity and advise on whether the activity:

1) Conflicts with the employee's official duties;

2) Uses the employee's government position for private gain (or the private gain of someone with whom the employee has a covered relationship);

3) Influences the employee in the performance of an official act;

4) Induces the employee to take or omit an action in violation of the employee's official duties;

5) Creates an appearance of any of the circumstances outlined above; or,

6) Creates an appearance that any other ethical standard has been violated.

Terms used in this guidance shall have the meaning provided by the Standards of Conduct and shall be interpreted consistent with all applicable standards of conduct. Employees submitting proposed activities for NEAC review shall provide all pertinent information necessary for the Committee's review, such as the nature and extent of their official duties, identification of affiliated parties and covered relationships, most recent financial disclosure form, and other relevant information.

Review Criteria

The NEAC will review proposed activities under the following criteria.

1. Does the proposed activity conflict with the employee's official duties?

An activity conflicts with an employee's official duties if the activity is prohibited by statute or agency supplemental regulation or if it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that his or her ability to perform the duties of the position would be materially impaired. The NEAC members should advise on whether recusals that would be required as a condition for approval of the proposed activity would materially impair the employee's ability to perform official duties.

2. Does the proposed activity use the employee's government position for private gain?

Employees are prohibited by law from using public office for his or her own gain, for the endorsement of any product, service, or enterprise, or for the private gain of others with whom the employee is affiliated. Private gain may arise through the inducement or coercion of benefits, if the employee uses or permits others to use his or her government position, title, or authority in a manner intended to coerce or induce another to provide a private benefit. It may arise through the appearance of governmental sanction, if the employee uses or permits others to use his or her government position, title, or authority in a manner that could reasonably be construed to imply that the government sanctions or endorses certain personal activities. Private gain may also arise through improper endorsements of private products, services, or enterprises, or where an employee's duties might affect the financial interests of persons with whom the employee has a covered relationship. These examples are not exhaustive.

The NEAC members should consider whether the proposed activity raises private gain or endorsement issues in light of the employee's official position and duties as well as in light of the employee's other outside affiliations and relationships.

3. Does the proposed activity influence the employee in the performance of an official act, or induce the employee to take or omit an action in violation of the employee's official duties?

Employees must be impartial in the performance of their official duties. The NEAC should consider whether a proposed activity would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the employee in carrying out official duties due to the nature of the particular matter, the particular parties, and the nature of the employee's official duties. The NEAC should also consider whether a proposed activity is likely to induce the employee to take or omit an action in violation of the employee's official duties.

4. Does the proposed activity use nonpublic information?

An employee is prohibited from engaging in a financial transaction using non-public information, as well as from allowing the improper use of nonpublic information to further his or her own private interest or that of another, whether through advice or recommendation or by knowing unauthorized disclosures. The NEAC members should advise on whether the proposed activity would be likely to involve the inappropriate use of non-public information.

5. Does the proposed activity involve the inappropriate use of government property?

Employees must protect and conserve government property and cannot use such property or allow others to use it for other than authorized purposes. Authorized purposes are those purposes for which government property is made available to members of the public or those purposes authorized in accordance with law, regulation, or NIH policy. The NEAC members should advise on whether the proposed activity would be likely to involve the inappropriate use of government property.