MEETING SUMMARY OF THE
NIH COMMITTEE MANAGEMENT OFFICERS COMMITTEE (CMOC)
February 8, 2005

Attendees: OFACP: LaVerne Stringfield (Chair)/David Clary/Melanie Gray/Nancy Middendorf/
Linda Payne/Anna Snouffer/Michelle Trout
CSR: Carol Scibek/Poppy Oden
NCCAM: Carol Fitzpatrick,
NCI: Claire Harris/Andrea Collins/David Alperin/Linda Southworth
NCRR: Brenda Blair/Antonette Neal
NEI: Janet Craigie
NHGRI:
NHLBI Svr Ctr: Kay Valeda
NIAAA: Ida Nestorio/Virginia Wills
NIAID Svr Ctr: Mary Nuss/Brenda Mitchell/Mark Stunkard
NIBIB: Shana Stepp
NICHD Svr Ctr: Mary Plummer/Kim Caraballo/Melvin Carter/Al Wigmore
NIDA:
NIDCD: Donna Kemmerle
NIDCR: Carolyn Baum
NIDDK Svr Ctr: Denise Manouelian/Olaf Fonville/Janet Gregory
NIGMS:
NIMH: Kate Whelan
NINDS:
NINR:
NLM: Christine Ireland
OD/ACD:
OD/OBA:

ANNOUNCEMENTS:

LaVerne Stringfield made the following announcements:

Responding to GAO s recommendation in their April 2004 report that each member s appointment category be identified in the GSA FACA database, GSA is adding peer review consultant to the member category. Also, the Report recommended that agencies provide improved guidance to ensure that advisory committees are, and are perceived as, balanced; and best practices that will better ensure independence and balance and enhance transparency in the advisory committee process. In response to this, LaVerne has met with Gretchen and will be developing a revised COI certification for working groups, adapting some language from the National Academies of Sciences Bias Forms.

Legal opinion was sought concerning an advisory committee member who was indicted, and who subsequently pleaded guilty, to wire and mail fraud charges. The HHS attorney advised that under 41 C.F.R. § 102-3.130 (a), advisory committee members serve at the pleasure of the appointing or inviting authority and membership terms are at the sole discretion of the appointing or inviting authority. In this case, the NIH Director is the appointing authority and would be the one to disinvite the member if NIH decides on that course of action. The HHS attorney further advised that there is no legal requirement that bars a person from a position because of a guilty plea. For example, just because a
competitive or excepted service employee has pled guilty to a criminal charge does not necessarily exclude that person from Federal employment. It’s at the discretion of management.

CMOs were reminded to identify an approximate end time for closed sessions on agendas listed in the Federal Register Notice. That is, do not announce that grant reviews will be conducted from 8:30 a.m. until recess (or adjournment). Put an approximate end time, for example, 8:30 a.m. - 9:30 a.m.

An EPMC working group on Council Operating Procedures has found some of the current en bloc voting procedures to be troublesome. Particularly, a statement in OER Manual Chapter 4513, Management and Procedures of National Advisory Councils and Boards in Their Review of Extramural Activities, Section F.3.b. states, When a Council concurs with the recommendations made in initial review on a group of applications, the Council may, without any conflict of interest implications, vote en bloc concurrence with the initial review recommendations. NIH Ethics Counsel has advised that there may be conflicts, and is giving en bloc concurrence a close review. CMOs were requested to send their comments/suggestions concerning en bloc procedures to LaVerne.

Under the A-76 review, SRAs have been deemed inherently governmental because of their FACA responsibilities. The EPMC working group is evaluating what functions of an SRA could be put in a Statement of Work. Also, under the A-76 initiative, the Extramural Support Services Most Efficient Organization (MEO) has several contractor ESAs (formerly known as GTAs) providing committee support in the Division of Extramural Activities Support (DEAS). To accommodate non-Federal professional and support staff attending closed sessions of SRG and SEP meetings, Policy Announcement 2002-01, Attendance at Closed Sessions of Meetings of National Advisory Councils, Scientific Review Groups, and Special Emphasis Panels, is being revised. In accordance with the policy, these individuals may attend if there is a bonafide need to know and on a case by case basis. They must sign a COI/Confidentiality certification at the meeting.

LaVerne congratulated all CMOs/Specialists/Assistants who received promotions during the past year.

NIH’s SREA Coordinating Committee is now under the auspices of CSR, headed by David Witmer, CSR Executive Officer. A SREA Implementation Team has been identified to carry out recommendations approved in the OMA audit of the SREA program at NIH.

Personnel Changes:
Mary Nuss introduced Brenda Mitchell, new CM Assistant in the NIAID Service Center. Mary also announced that she will soon be advertising for a GS-11/12 Deputy Director.
Kay Valeda announced that she is currently advertising for a GS-9/11 CM Specialist for the NHLBI Service Center.

INFORMATION ITEMS:

Minority Classifications:
LaVerne reviewed the most recent designations of Minority Classifications and Underrepresented Minorities, as stated in OMB Revisions to Directive Number 15 of 1997, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. The designations were revised for use in the 2000 decennial census. Members received a handout. A more detailed description including a breakout of the various groups under each classification will be prepared by OFACP and forwarded to the CMOs.

Updates:

Subcommittee Policy:
LaVerne reported that all comments and clearances have been received and the final policy will soon be distributed. NOTE: OFACP Policy Announcement 2005-01: Membership and Management of Subcommittees of National Advisory Councils, Program Advisory Committees, and Boards of Scientific Counselors was issued on February 18, 2005.

DEAS Working Group:
Melanie Gray reported that ESA training went well. Anna Snouffer added that she and Melanie conducted two training sessions on coding meeting attendees for members serving on IRGs and SEPs. A FACA overview was also presented. The sessions were well attended, with new DEAS personnel having lots of questions. Additional training sessions will be planned. Anna and Melanie thanked everyone who provided input to the course materials, particularly Kerry Peasland. Her NCI training document, Coding Meeting Attendees, was revised and adapted for use by all ICs. It has been be posted on OFACP’s website as a reference tool.

Multiple Service on HHS Committees:
LaVerne informed members that the memo is being finalized, informing IC Directors, OD Senior Staff, and Executives Secretaries that a Federal advisory committee member may not serve on more than one committee within the Department at the same time. This is a revision to HHS’ longstanding policy that a Federal advisory committee member will not serve on more than one committee within an agency at the same time. For this purpose, the Department is now considering themselves an agency. This new interpretation applies to NIH’s national advisory councils and program advisory committees whose members are appointed by the Secretary, HHS. CMOs will also receive this guidance, including instructions on how to search the GSA FACA Database to determine if a potential nominee is serving on another HHS committee.
CM IMPAC II:
Anna informed members that the current program remains frozen during the conversion of the eRA client-server modules to J2EE - web versions. The final Code Delivery is expected to occur in three weeks. At that time, volunteers will be needed for six to eight weeks to test the CM and peer review functions. After that, the pilot production will be released, and requested modifications to the CM Module will resume shortly thereafter.

Travel:
Linda Payne alerted members that Office of Financial Management will be conducting a review to ensure that travel cards are being used appropriately. Anyone identified for review will be required to complete a questionnaire form.

Linda reviewed a handout she provided of NIH Manual Chapter Website Travel Hints. She also announced that there will be a Principal Travel Assistants meeting at 10 a.m. on February 15, in Building 31, conference room 10.

Ethics:
Nancy Middendorf reported the following:
1. **REMEMBER**: Copies of signed waivers/addenda for all committees (including OD committees) must be sent to Gretchen Weaver, NIH Ethics Counsel, for filing with the Office of Government Ethics. These signed copies may be sent to the attention of Gretchen’s assistant, Kathy Haumann, 3/2B47.

2. **New Supplemental Standards of Ethical Conduct & Financial Disclosure** have been issued as an Interim Final Rule, effective upon the date of publication in the Federal Register, February 3, 2005. Interim means that although the Rule is effective, comments will be received no later than April 4. In one year, HHS will evaluate provisions of the Rule and will consider the comments received. Dr. Zerhouni is encouraging employees to submit comments, as directed in the preamble to the Rule, before April 4. Members were advised that they may comment via NIH e-mail or by letter on personal letterhead. Comments may NOT be made on NIH letterhead.

Nancy provided a handout of the following links related to the new ethics regulation:

**Interim Final Rule:**
http://www.nih.gov/about/ethics/supplemental_ethics_regulation.pdf

**Comments** on the interim final rule must be submitted by April 4 to: 
*ethics@hhs.gov* OR *Ethics, Response (HHS/OS)* [located on NIH’s global menu]. The subject line should read: Comments on Interim Final HHS Supplemental Ethics Rule
Frequently Asked Questions:
http://www.nih.gov/about/ethics/02220105COI_QandA.htm

Submit questions to NIH Ethics Office at:
NIHEthicsOffice@mail.nih.gov OR
<mailto:NIHEthicsOffice@mail.nih.gov>

Nancy informed members that the new regulation focuses on three areas of the ethics program:
- prohibited outside activities
- prohibited financial holdings
- awards

The Rule does NOT apply to SGEs, but does apply to ALL NIH employees.

All NIH employees are prohibited from engaging in certain outside activities with:
- Pharmaceutical, biotechnology, and medical device companies
- Supported research activities
- Health care providers and insurers
- Health, science, or health research related trade or professional associations

These prohibited activities must be stopped within 30 days of the Rule's effective date, February 3. A 60-day extension may be requested if it is unreasonable to bring the outside activity to closure in 30 days.

All outside activities much be approved in advance. This includes such outside work as sales clerk, house painter, office clerk, etc. It excludes volunteer work with social, fraternal, religious, political, or recreation organizations.

NIH employees who are SG 278 or OGE 450 filers are prohibited from acquiring or holding financial interests in pharmaceutical, biotechnology, and medical device companies.

All NIH employees who are non-filers of SF 278s or OGE 450s (and their spouses and minor children) are subject to a combined $15,000 cap on holdings in any one affected organization (pharmaceutical, biotechnology, medical device company), as long as no conflict arises. Such holdings will have to be reported annually.
Employees have 150 days to divest. HOWEVER, Dr. Kington advises that it is important that you DO NOT take immediate action re. Stock holdings. It would be premature and could be costly to begin the sale of any investments without receiving forthcoming guidance on the divestiture process.

Filing status is being reviewed across NIH, standardized criteria is being developed, and many more SF 278 and OGE 450 filers are expected to be identified.

Office of Human Resources will be giving all new employees a packet including the Standards of Conduct, Interim Final Rule, Frequently Asked Questions, Information memo from Dr. Zerhouni, and a video that they will view. New employees will have to sign, acknowledging that they received the above information.

A statement will be added to all vacancy announcements, informing applicants that it may be necessary for them to divest certain financial holdings.

3. The second revised draft of Manual Chapter 1810-1, Procedures for Avoiding Conflict of Interest for NIH SGE Advisory Committee Members, is currently being reviewed by Mary Plummer, Kate Whelan, David Clary, Melanie Gray, and Gretchen Weaver. Since this is the second draft, the review has been streamlined.

4. Gretchen Weaver, NIH Ethics Counsel, will attend our March meeting to discuss procedures for ex officio advisory committee members. CMOs requested that Gretchen also answer some of their foreign activities questions at that time. NOTE: Nancy will send an e-mail, requesting CMOs to submit their questions to her in advance of the March 8 meeting.

Commission on Systemic Interoperability:
Christine Ireland reported that the Commission on Systemic Interoperability held its first meeting on January 10. This is a mandated HHS Commission that will hold six meetings and three conference calls between now and October, and will be terminated after its report is submitted to the Secretary and Congress. NLM is providing management and support services for the Commission. The Commission is required by law through the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and was established to develop a comprehensive strategy for the adoption and implementation of health care information technology standards. It will make recommendations to the Secretary, HHS; the Senate, the House of Representatives; and the President. The eleven members are appointed by the President, the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House of
Representatives. The Chair is appointed by the President. Christine and Anna attended the first meeting. The Secretary also attended a portion of the meeting. Presentations were made, defining the various levels of interoperability.

Christine extended a grateful thank you to Anna for helping facilitate the committee’s establishment, e.g., charter, Federal Register notice, appointments, logistics for January meeting, within a two-week time frame during the holidays.

**Working Group Recommendations:**
LaVerne advised members that OFACP Policy Announcement 2000-01: *Working Groups at the NIH*, clearly defines a working group as being temporary in nature to gather information, analyze relevant issues and facts, and draft proposed position papers **for final deliberation by the chartered (parent) advisory committee** [emphasis added]. LaVerne has been asked what actions to take if the parent committee does not completely agree with all the working group’s recommendations. She explained that it is the committee’s role to deliberate the working group’s recommendations and decide if they should be forwarded to Federal officials. Federal officials do not have to accept the recommendations. All deliberations and committee actions must be reflected in the committee’s minutes. LaVerne will update the current working group policy to include this guidance.

**Badges for NIH-Affiliated Travelers:**
Mary Nuss announced that she received an e-mail from her A.O. regarding NIH-Affiliated and Non NIH-Affiliated Travelers. The e-mail states that NIH-Affiliate travelers (...including Federal Advisory Committee Members, Special Government Employees,...) must be badged. Nancy will bring this to LaVerne’s attention so that OFACP can coordinate a research effort on this issue. Nancy will forward Mary’s e-mail to the CMOs. **NOTE:** Linda Payne advised CMOs on February 15 that badges are not required for SGE advisory committee members. However, the NIH Business System (NBS) requires that NIH-Affiliated traveler’s data relating to badging be entered into the NIH Enterprise Directory (NED). NED entries flow directly into the NBS system so travel authorizations and vouchers may be prepared. Since Federal advisory committee members that are SGEs are assigned NED ID numbers when the traveler’s information in entered in the NED system, the NED ID number satisfies the requirement that NIH-Affiliated travelers must be badged.

**GAO Report on Federal Communications Commission:**
Linda reported that in GAO’s report on FCC advisory committees, they found that all their advisory committee members are appointed as Representatives. This is of great concern to GAO because Representatives are exempt from filing an OGE 450 financial disclosure report. GAO also noted that the role of a Representative is to express the views of their industry. However, the Representatives serving on FCC’s advisory committees were found to often express their own points of view at the meetings, and not those of their industry. GAO concluded that FCC’s advisory committee members should be appointed as SGEs.
Agenda Setting Committee:
The CMOC meeting agendas are primarily developed by LaVerne and Nancy. When agenda items are solicited from the CMOs, there is usually very little if any response. LaVerne would like to establish a small committee of CMOs to solicit and prioritize agenda items, to ensure we are hitting the interests of the members. Mary Nuss agreed to chair the committee on a trial basis (two months). Volunteers for the committee include Carol Fitzpatrick, Kay Valeda, Kate Whelan, and Virginia Wills. Mary will submit prioritized suggestions to Nancy, for inclusion with OFACP’s monthly agenda items. LaVerne reminded the committee of the NIH Speakers Bureau as a resource for guest speakers. Christine would like Dr. Hausman to return; Mary Plummer suggested inviting the Chair of EPMC’s Working Group to discuss en bloc procedures.

Primary/Alternate Nominee Report:
David Clary presented a summary of data concerning OS approvals of Secretary-appointed nominees.

FACA Legal Case:
Nancy reported a FACA legal case concerning a Commission that invoked exemption 9(B) to close their meetings regarding fiscal policy. The Commission was concerned about the market ramifications of public testimony by senior official economists, and they argued that publicity would inhibit the meetings. However, the court concluded that there is no blanket exemption for agency meetings at any stage of the budget preparation process. The court stated that meetings could only be closed on an individualized and particular basis, and while specific items might justify closing portions of the meetings, the Commission could not screen all deliberative processes from public scrutiny.

Members were reminded of NIH’s Legal Opinion Re. Closed Sessions of Advisory Committee Meetings Under Exemption 9(B), Government in the Sunshine Act, dated 01/11/2001. In summary, Federal Register Notices citing Exemption 9(B) must provide specific reasons that demonstrate the discussions would significantly frustrate the implementation of a proposed agency action. This includes discussions related to budget, economic and fiscal matters, final approval of draft documents, programmatic issues and confidential administrative issues. The detailed memo of justification must accompany the Federal Register Notice. These notices are reviewed and cleared by Office of the General Counsel before the Director, OFACP signs them.

TABLE TALK:

Mary Plummer confirmed that orientation/working lunches do not have to be announced in the Federal Register.

Kate Whelan has been working since November to replace a DoD ex officio member, with frustrating results. Others are also experiencing trouble filling their DoD ex officio vacancies. It was confirmed that Janet Brown is the contact and should be consulted. NOTE: Since the meeting, Carolyn Baum was informed that Frank Little has replaced Janet Brown. He may be contacted as follows:
Anna will inform members when she has entered Secretary Leavitt’s profile in CM IMPAC II. Members should then enter an ex officio slate, and inform their analyst to clear it, so that the new Secretary appears as an ex officio member on appropriate rosters. NOTE: Anna informed CMOs on February 14 that the Secretary’s profile is in CM IMPAC II.

/s/
Nancy Middendorf
Executive Secretary

NEXT MEETING
Tuesday, March 8, 2005
6700B Rockledge Drive/1st Floor Conference Room 1205
CMO Interaction: 8:30 a.m.
Business Meeting: 9:00 a.m.