

OFACP Policy:

Implementing Ban on Lobbyists Serving on Advisory Committees

REVISED OCTOBER 2014

Policy Revision – October 2014

This policy document was originally issued December 2011 and revised in September 2012 to provide guidance on implementing the White House memorandum banning the use of federally register lobbyists on federal advisory committees. This policy has been re-issued to modify implementing procedures based on revised Office of Management and Budget (OMB) guidance published in the Federal Register on August 13, 2014.

Background

On June 18, 2010, President Barack Obama issued a Presidential Memorandum announcing a continued commitment to reduce the influence of special interests by keeping federal advisory committees and boards free of federally registered lobbyists. The Office of Management and Budget (OMB) was directed to issue final guidance to implement this directive following a public comment period. On October 5, 2011, OMB published “Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions.” The prohibition on the appointment of federally registered lobbyists applies to appointments and re-appointments made after June 18, 2010. On August 13, 2014, OMB issued revised guidance to clarify that the ban on appointing federally registered lobbyists applies only to persons serving in their individual capacity and

not if they are appointed to represent the interests of an organization, industry or other interest group.

The prohibition on the appointment of lobbyists applies to individuals appointed and serving as a result of their individual expertise (Special Government Employees (SGEs), Federal members appointed as a result of their scientific expertise or research experience, and National Institutes of Health (NIH) Peer Reviewers) who are federally registered lobbyists, and for the purposes of this policy, includes any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act of 1995 (LDA), as amended (2 USC 1605). The entities or groups covered include any board, commission, council, delegation, conference, panel, task force, or other similar group or subgroup *regardless of whether it is subject to the Federal Advisory Committee Act (FACA)*. At NIH, this includes, but is not limited to all NIH/HHS National Advisory Councils (NACs), Program Advisory Committees (PACs), Boards of Scientific Counselors (BSCs), Initial/Integrated Review Groups (IRGs), Special Emphasis Panels (SEPs), and any subcommittee or workgroup of one of these committees. In addition, the policy applies regardless of whether the appointment is required or permitted by law or regulation, including an appointment at the discretion of the department or agency. The ban on the appointment of lobbyists includes workgroups

and subcommittees for any advisory committee, which may or may not require formal appointment. Accordingly, standing members (Federal and non-Federal) of NACs, PACs, BSCs, IRGs, or other advisory committees, as well as temporary members on IRGs and SEP members, are included. This requirement also applies to members of subcommittees and workgroups.

The prohibition does not apply to individuals who are invited to attend, on an ad hoc basis, meetings of NACs, BSCs and PACs, those who serve as appointed Representatives (representing the interests of specific organizations, industries or other interest group), or Federal members that serve based on a specific position or title (ex officio members or Federal officials designated as Chair as identified in a committee's legislation or charter requirements). Note: Ad hoc attendees cannot vote, make motions, or count towards a quorum for a meeting.

NIH Policy

Implementation of this policy is delegated to each Institute/Center (IC) at NIH that operates and/or manages a federal advisory committee and any workgroups or subcommittees reporting back to that "parent" committee.

Responsibilities and duties required may be assigned to multiple individuals within an Institute or Center.

This policy makes no provisions for waivers, and waivers will not be permitted under this policy.

Implementation Procedures

It must be clearly communicated to all appointed members, including Federal members, that if their positions or other activities require them to be federally registered lobbyists, it would necessitate their resignation or removal from serving on an

NIH/HHS federal advisory committee if appointed after June 18, 2010.

Nomination of Standing Members

IC staff involved in managing an NIH/HHS advisory committee must ensure that individuals nominated to serve in their individual capacity (SGEs, Federal members, or NIH Peer Reviewers) as standing committee members are not federally registered lobbyists. This must be accomplished by (1) requiring that the nominee certify that he or she is not a federally registered lobbyist; or (2) checking federal lobbyist database(s) to confirm that each nominee is not registered as a lobbyist. IC Committee Management Officers will include certification forms or statements in the nomination package (worksheet or other formal documentation) indicating the nominees included on a nomination slate are not federally registered lobbyists. This procedure applies to all committees that have formally nominated/appointed members (NACs, PACs, BSCs, and IRGs).

Current Members

IC staff involved in managing NIH/HHS NACs, PACs, and BSCs, must ensure, at least annually, that committee members are not federally registered lobbyists. This must be accomplished by requiring that the appointed member certify that he or she is not a federally registered lobbyist. Certification forms must be retained and kept with the official committee file.

Peer Review Meetings

IC staff involved in using Standing, Temporary and/or Special Emphasis Panel members must ensure, prior to attendance at a peer meeting, that each member, including Federal employees, is not a federally registered lobbyist. The Internet-Assisted Review Module (IAR) has been modified to support the identification of federally registered lobbyists

serving on NIH peer review groups. IAR requires reviewers to indicate whether or not they are a federally registered lobbyist. Additional information on this specific function can be found on the eRA intranet. No paper copies or report of member certification is required. The lobbyist certification is maintained within the database for one year.

**Subcommittees or Workgroups of NIH
Advisory Committees and Peer Review
Meetings Conducted Not Using IAR**

IC staff involved in managing subcommittees and/or workgroups of NIH/HHS advisory committees (BSCs, PACs, NACs, IRGs) or any peer review meeting not conducted using IAR must ensure, at least annually, that committee members are not federally registered lobbyists. This must be accomplished by requiring that the member certify, prior to attendance at a meeting, that he or she is not a federally registered lobbyist. Certification forms must be retained with the official meeting file.

This policy is effective immediately.

Questions on this policy should be referred to the Office of Federal Advisory Committee Policy, (301) 496-2123

References

Presidential Memorandum – Lobbyists on Agency Boards and Commissions
(June 18, 2010)

Federal Register Notice – Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions (October 5, 2011)

Federal Register Notice – Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions
(August 13, 2014)

Attachment

Certification Form

**NIH ADVISORY COMMITTEE
NOMINEE/MEMBER CERTIFICATION FORM**

On June 18, 2010, President Barack Obama issued a Presidential Memorandum announcing a continued commitment to reduce the influence of special interests by keeping federal advisory committees and boards free of federally registered lobbyists. The Office of Management and Budget (OMB) was directed to issue final guidance to implement this directive following a public comment period. On October 5, 2011, OMB, published "Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions." The prohibition on the appointment of federal registered lobbyists applies to appointments and re-appointments made after June 18, 2010.

Appointing Officials or their delegates/designees must ensure, at least annually, that advisory committee, temporary, SEP, subcommittee and working group members are not federally registered lobbyists. Members that become federally registered lobbyists after an appointment must resign or be removed from advisory committee service.

Identification of Member Type

Check Appropriate Nominee/Member Type

Potential Nominee

Current Member

Meeting Attendee
(Temporary or Special Emphasis Panel)

Name of Committee (workgroup/subcommittee)_____

Nominee/Member/Attendee Certification

I certify that the following is true:

I am not a federally registered lobbyist*

Printed Name

Signature

Date

*former lobbyists must meet criteria outlined in section A1 of OMB's *Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions* published in the Federal Register on 10/5/2011.