



**Policy & Procedure for the Recruitment of Individuals Employed at Federal Agencies  
(non-DHHS) on NIH Scientific Review Groups (SRGs)  
[Initial/Integrated Review Groups (IRGs) and Special Emphasis Panel Meetings (SEPs)]**

**August 31, 2020**

(supersedes guidance dated June 5, 1998)

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**Background:** Section 708 of the government-wide general provisions of the Consolidated Appropriations Act (Section 708) <sup>1</sup> states that, “*No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.*” This prohibition on interagency financing covers both cash and in-kind financial support, including supplies, administrative staff support, and other staff involvement that supports the committee function. This policy and procedure establish the method by which NIH will obtain assurance that individuals employed by other Federal agencies do not participate in NIH peer review committee activities in a manner that could cause NIH to violate Section 708.

**Applicability:** This policy and procedure applies to the selection and invitation of Federal employees of agencies outside of the Department of Health and Human Services (HHS),<sup>2</sup> whether they are full-time or part-time, including those who have dual appointments with other institutions or universities, to serve as an appointed member of an Initial/Integrated Review Group (IRG), to participate as a temporary member and/or Special Emphasis Panel (SEP) member at NIH peer review committee meetings, and/or to participate on site visits and working groups of a Scientific Review Group (SRG) whether they are open or closed to the public.<sup>3</sup>

**Policy Statement:** Individuals who are employed by Federal agencies (non-HHS) may serve as appointed committee members and/or temporary members on IRGs and members of SEPs and

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<sup>1</sup> Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, §708, 133 Stat. 2486 (2019). Section 708 of the government-wide general provisions to the Consolidated Appropriations Act, 2020, has been included in the government-wide general provisions to annual appropriations acts for at least the past 20 fiscal years.

<sup>2</sup> The selection and invitation of employees of an HHS Operating or Staff Division is not covered by this policy and procedure. HHS components and staff should continue to follow existing policies and procedures applicable to official duty HHS employee participation in NIH peer review committee activities.

<sup>3</sup> The selection and invitation of individuals employed by the Henry M. Jackson Foundation who are NOT considered Federal employees are not covered by this policy and procedure. The service of such individuals is not prohibited by Section 708.

may participate in site visits and on working groups of SRGs provided they do so as a personal or “outside” activity.<sup>4</sup>

**Effective Date:** Immediately.

**Discussion:** Section 708 provides that no appropriated funds may be used for interagency financing of any board, commission, council, committee, or similar group, unless there is prior and specific statutory authority for such entity to receive financial support from more than one agency. The prohibition on interagency financing of advisory groups, boards, and commissions covers both cash and in-kind (i.e., non-cash) financial support. In-kind financial support not only includes contributions of supplies and administrative staff support, but also includes staff attendance and participation that supports a committee function, such as voting or generating recommendations. As a result, pursuant to Section 708, non-HHS Federal employees may not participate in NIH peer review committee activities as part of their official duties, while on official time, or while using their employing agency’s resources.<sup>5</sup>

If, however, a Federal employee engages in the peer review committee activity outside of duty hours or while on annual leave and does not use the employing agency’s resources, the employing agency’s appropriation is not supporting the NIH committee or group and the appropriations provision (Section 708) prohibiting such support is not implicated.<sup>6</sup> This includes all activities associated with participating in a peer review committee meeting such as reading applications or writing critiques. Accordingly, NIH compliance with Section 708 is best ensured through the implementation of procedures intended to document that the individual will engage in NIH peer review committee activities outside of duty hours or while on annual leave and without the use of the employing agency’s resources.<sup>7</sup> When the non-HHS Federal employee does not use the employing agency’s resources and takes annual leave and/or ensures that the participation is outside of duty hours, then he/she is eligible to receive reimbursement and honoraria for services as a peer review consultant.

The procedures identified below as well as the certification process will require additional time and should be factored into the recruitment phase for any peer review committee activity (e.g.,

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<sup>4</sup> The selection and invitation of any employee of a non-HHS Federal agency, including any individual who may have a dual appointment with a non-Federal institution or university, must be in accordance with this policy and procedure.

<sup>5</sup> Although some agencies have so-called personal or minimal use policies that may permit agency employees to use government resources, such as IT equipment, supplies, or telecommunications accounts, for personal needs, when Section 708 applies, NIH cannot accept services performed using another agency’s resources. The policies of other agencies do not represent an exception to Section 708.

<sup>6</sup> Section 402(b) of the Public Health Service Act, as amended, states that “[n]ot more than one-fourth of the members of any such group shall be officers or employees of the United States.” Individuals who are Federal employees but who engage in NIH peer review committee activities outside of their official duties are not counted in the one-fourth calculation.

<sup>7</sup> NIH invites individuals to conduct peer review based on their individual expertise, not the identity of their employers or other affiliations. They need not, therefore, attest that they will perform on behalf of or in their capacity as an employee of any entity.

meeting or site visit). Review staff should also consider additional options for recruiting the appropriate expertise if the non-HHS Federal employee's agency does not approve the outside activity or the non-HHS Federal employee is unwilling to participate on non-duty time.

### **Implementation Procedures:**

1. When recruiting any individual to serve on an SRG, the Designated Federal Officer (DFO)/Scientific Review Officer (SRO) must refer to the policy and ask that person if he/she has full or part-time non-HHS Federal employment or appointment (see sample email in Appendix I).
2. If the individual answers in the affirmative, the DFO/SRO will:
  - a. remind the potential reviewer of the policy;
  - b. ask for non-Federal contact information for future communications;
  - c. ask the individual to ensure his/her non-Federal email address (i.e., personal or non-Federal institution) is selected in eCommons to be enabled in Internet Assisted Review (IAR);
  - d. instruct the person to follow his/her agency's guidance for obtaining outside approval, as needed; and
  - e. instruct the person to sign the certification form and return it to the DFO/SRO prior to any activity associated with peer review, such as reading applications, writing critiques, or meeting attendance. Individuals cannot receive assignments or review applications until the certification is signed and received.

### **Of Special Note:**

- **Communications with non-HHS Federal employees:** While DFOs/SROs may initially contact a non-HHS Federal employee to serve, subsequent communications with the non-HHS Federal employee via non-Federal methods ensures compliance with Section 708 as the use of government emails and phones is considered use of a Federal resource.
- **Nomination of Standing Members:** When non-HHS Federal employees are nominated to serve as standing members, IC Committee Management Officers will include a statement on the Slate Worksheet that the nominee has certified that they will be serving on the committee as an outside activity.
- **Current Standing Committee Member Appointments:** Current committee members and all new appointees who are full or part-time non-HHS Federal employees who generally serve four-year to six-year terms must comply with this policy upon initial appointment and on an annual basis throughout their term or until their non-HHS Federal employment ends. If a standing committee member becomes a non-HHS Federal employee, accepts a non-HHS Federal appointment, or moves to a different non-HHS Federal agency during his/her term, he/she must obtain appropriate approval, as needed, and sign the certification. The certification must be retained with the official committee file.

- **Temporary/Special Emphasis Panel Members/Site Visits or Working Group**  
**Participants:** IC staff involved in using Temporary and/or Special Emphasis Panel/Site Visits or Working Group participants must ensure, prior to any activity associated with peer review, such as reading applications, writing critiques, or meeting attendance, that each non-HHS Federal employee has certified that they will be participating on the committee as an outside activity. The signed certification form must be retained with the Official Meeting File.
- **Rosters:** When an individual completes the certification, the roster address can display their non-HHS Federal employment title and address.<sup>8</sup>

**Final Note:** This is an interim procedure. OFACP will work with eRA to build functionality for an automated solution using IAR for all peer review consultants to certify whether they are/are not a non-HHS Federal employee.

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

Appendices:

- Certification Form
- Appendix I – Sample Email
- Appendix II – FAQs and Quick Tips

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<sup>8</sup> A notation indicating that he/she is not performing peer review committee activities in an official capacity for his/her non-HHS Federal agency will be included on the roster as soon as technically feasible.



**CERTIFICATION OF OUTSIDE ACTIVITY APPROVAL**

**Participation in an NIH Peer Review Committee Meeting**

**Committee/Panel Name:** \_\_\_\_\_

**Meeting Date:** \_\_\_\_\_

**Name of Member/Participant:** \_\_\_\_\_

**Certification:**

\_\_\_\_\_ I am a Federal employee/I hold a Federal appointment (full or part-time) at a non-HHS Federal agency and I certify that I will not engage in NIH peer review committee and related activities while on official duty time or administrative leave or while using the resources or supplies of my employing agency. I understand that I must comply with the requirements of my employing agency, if any, regarding outside activities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

In order to receive reimbursement for participation at NIH peer review committee meetings, you will need to set up an account with eRA Commons at the following link:  
<https://public.era.nih.gov/commons/public/login.do?TARGET=https%3A%2F%2Fpublic.era.nih.gov%2Fcommons%2Fcommonslnit.do>.

**Sample language for SROs:**

I am contacting you to inquire if you would be available to serve as an NIH peer reviewer for an upcoming meeting of **[insert committee or panel name or the name of the initiative]** scheduled for **[insert date]**. If you are willing to serve, in addition to adhering to peer review regulations and policies, you must adhere to an NIH policy put in place to ensure compliance with Section 708 of the government-wide general provisions of the Consolidated Appropriations Act, which states that:

*“No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.”* Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, §708, 133 Stat. 2486 (2019)

Please let me know if you are a Federal employee of a Department or agency outside of the Department of Health and Human Services (HHS), either full-time or part-time (even if you have a dual appointment with other institutions or universities). If one of these situations applies to your employment or appointment status, I am required to inform you that:

- Our future communications must be through non-Federal methods (your private email accounts, phone or if appropriate, your non-Federal institution’s accounts). Please check to be sure your non-Federal email address is selected in eCommons. If you do not have an alternate non-Federal email address in eCommons, please update your account in order to be enabled in Internet Assisted Review.
- You must follow your Federal agency’s guidance for obtaining approval for an outside activity, as needed.
- All peer review committee and related activities such as reading applications, writing critiques, and meeting attendance must take place either (1) outside of non-HHS Federal duty hours and without the use of Federal resources; or (2) while on Federal annual leave (if applicable, your non-Federal institution’s time) and without the use of Federal resources. Non-Federal resources include personal equipment such as computers, internet or, if appropriate, your non-Federal institutions resources.

Again, if the above non-HHS Federal employment status applies to you and you are willing to participate in one or more peer review committee meetings and related activities under the circumstances just outlined, please send me your non-Federal email and I will send you a certification form for your review and signature.

Thank you for your consideration.

## FAQs and Quick Tips

### **Policy & Procedure for the Recruitment of Individuals Employed at Federal Agencies (non-HHS) on NIH Scientific Review Groups [Initial/Integrated Review Groups (IRGs) and Special Emphasis Panel Meetings (SEPs)]**

#### **FAQs:**

**NIH has been using peer reviewers from non-HHS Federal agencies for many years. Why has this changed?**

- The General Services Administration (GSA), which oversees FACA, recently directed the attention of Federal agencies to a long-standing government-wide general provision (Section 708) in annual consolidated appropriations acts. This provision provides that no appropriated funds may be used for interagency financing of any board (other than Federal Executive Boards), commission, council, committee, or similar group, unless there is prior and specific statutory authority for such entity to receive financial support from more than one agency [Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, §708, 133 Stat. 2486 (2019)]. The prohibition against interagency financing includes support in the form of employee membership on a FACA committee.
- NIH therefore undertook a comprehensive review of all NIH's FACA committees to ensure compliance with Section 708. Following this review and in consultation with the Office of the General Counsel, NIH has issued a policy directing that a non-HHS Federal employee may not participate as a member of an NIH Scientific Review Group as part of their official duties of the non-HHS Federal agency, while on official time, or while using their employing agency's resources.

**What is meant by "interagency financing"?**

- Interagency financing covers both cash and in-kind financial support, including supplies, administrative staff support, and other staff involvement that supports the committee function.

**Is participation in a review meeting itself considered an outside activity; or should any time used for the review process (e.g., reading applications, writing critiques, participating in reviewer orientation, etc.) also be outside of the Federal duty time?**

- All the above are considered outside activities and cannot be carried out while on official duty nor can the agency's resources or supplies be used.

**If individuals have joint appointments at non-Federal entities and a non-HHS Federal agency, can they carry out their review responsibilities under the non-Federal appointment instead of obtaining separate permission for an additional outside activity from their non-HHS Federal agency?**

- Individuals should consult with their non-Federal entity to determine their policies for conducting peer review committee activities. The key point is individuals who have dual/part-time appointments at a non-HHS Federal agency certify that they will not carry out peer review committee activities during their official duty hours or use their agency's resources or supplies. If a DFO/SRO is unsure whether certain entities are considered Federal, he/she should consult with OGC.

**If an individual has a dual appointment, i.e., VA and University of Alabama, and the individual certifies that they will not carry out peer review committee activities during their official duty hours or use their agency's resources or supplies, then can the roster indicate their non-HHS Federal appointment instead of identifying them as a consultant?**

- Yes; however, if the non-HHS Federal appointment is used on the roster, as soon as technically feasible, a notation must be added to the roster to indicate that the individual is not conducting peer review committee activity as an official duty for the non-HHS Federal agency.

**Is the DFO/SRO required to ask about an individual's employment as a part of the recruitment process?**

- Yes. OFACP drafted a template email that DFOs and SROs can use (see Appendix I of the policy).

**Why do non-HHS Federal employees have to use annual leave?**

- To avoid implicating Section 708, non-HHS Federal employees must take annual leave if they will engage in any peer review committee activity, including all advance review and preparation, during what would otherwise be their official duty time.

**Can peer reviewers still receive reimbursement, including travel reimbursement, and honoraria?**

- When the non-HHS Federal employee (full or part-time) does not use the employing agency's resources and takes annual leave and/or ensures that the participation is outside of duty hours, then he/she is eligible to receive reimbursement and honoraria for services as a peer review consultant.

**If a non-HHS Federal employee takes annual leave and receives honorarium, isn't that "double dipping"?**

- Annual leave is considered personal time, which a Federal employee can use for personal business, including peer review committee work. Therefore, it is not considered double dipping.

**Are “mail reviewers” covered by this policy?**

- No. Mail reviewers are not members of peer review committees; and their role in the peer review process does not implicate Section 708 for the purposes of this policy.

**Are temporary/standing members covered by this policy?**

- Yes. The role of temporary/standing members in peer review committee activities is consistent with the participation of full members, and this policy therefore applies to temporary/standing members.

**How do DFOs and SROs ensure that a non-HHS Federal employee abides by these procedures?**

- DFOs/SROs are not responsible for ensuring that full-time or part-time non-HHS Federal employees comply with this policy. However, DFOs/SROs are responsible for obtaining the necessary certifications from individuals before they serve as a peer reviewer.
- It is incumbent upon individuals who are employees or hold appointments with non-HHS Federal agencies to certify that they (1) have received any necessary approval to participate in NIH peer review committee activities as an outside activity, (2) will take annual leave and/or ensure that their participation is outside of duty hours, and (3) will not use their employing agency’s resources.
- Peer reviewers who have a part-time/dual appointment must acknowledge that they are part-time non-HHS Federal employees and certify that they will not engage in NIH peer review committee activities during official duty hours and not use their agency’s resources or supplies.

**How will DFOs/SROs confirm whether a peer reviewer is a full-time or part-time Federal employee?**

- Through the certification form.

**Are National Advisory Councils/Boards (NACs), Program Advisory Committees (PACs), and Boards of Scientific Counselors (BSCs) subject to the same restriction?**

- Whether a NAC, PAC, or BSC is subject to the same restriction is dependent upon on the statutory authority under which the committee was established. A Guide for Use of Federal Employees is in development by OFACP in consultation with OGC. The Guide will be posted in the near future in Chapter 3 – Chartering Federal Advisory Committees of the NIH CMO Handbook.

**When the policy is implemented, will the new provisions apply to the currently standing committee members who have a non-HHS Federal employment or appointment or will they be grandfathered in?**

- Until the policy is implemented, members can serve out their terms. Once the policy is effective, current and new standing members must comply with the policy and provide the necessary certification to the DFO/SRO.

**Can consideration be given to situations in which an IC has a special relationship with the non-HHS Federal entity, as evidenced by execution of an MOU/IAA, statutory requirements for ex officio representation on an IC's advisory committee(s), joint service as nodal agencies under international agreements, or other such relationships?**

- The IC should consult with OGC.

**Are there circumstances in which a peer reviewer could be appointed under an Interagency Personal Agreement (IPA)?**

- The IC should consult with OFACP and OGC; however, please note that an IPA probably would only be used in very rare circumstances due to prohibitive costs.

**Will this process eventually be automated?**

- Yes. OFACP will work with the Review Policy Committee and appropriate eRA IT staff to develop an automated process.

**The non-HHS Federal employee has received agency approval, if needed, for the outside activity and signed the certification. What pre-COI and post-COI form does he/she sign?**

- The individual will sign the non-Federal pre-COI and post COI forms.
- Please see "Meeting Attendee" screenshot below which provides guidance on how to enter the non-HHS Federal employee in CMM to obtain the non-Federal pre- and post-COI forms.

**Why isn't the individual required to sign a Federal COI form since they are a non-HHS Federal employee?**

- The individual is not required to sign a Federal conflict of interest form because their attendance as an NIH peer review consultant is not tied to their Federal employee duties. The individual is participating as a member of the public.

**Quick Tips:****Non-HHS Full-Time Federal Employee:**

- Follow non-HHS Federal agency procedure to obtain outside activity approval, as needed.
- Once any required outside activity approval is granted, the individual signs NIH Certification of Outside Activity Approval Form and submits it to DFO/SRO. DFO/SRO files (or provides to Committee Management staff to file) in the Official Meeting File.
- May use non-HHS Federal employment title and address, i.e., Program Official, DoD for roster address.
- The individual's profile in eCommons must be modified to reflect a non-Federal email address (i.e., personal or non-Federal institution) for that individual to be enabled in Internet Assisted Review (IAR). A notation indicating that he/she is not performing peer review committee activities in an official capacity for his/her non-HHS Federal agency will be included on the roster as soon as technically feasible.
- See "Meeting Attendee" **or** "Nomination Slate – Details" Screenshots below from CMM for correct coding.
- Individual is eligible for reimbursement and consultant fees.

**Non-HHS Part-Time Federal Employee – As an example, individual works at the VA and a university: *If attending as personal activity:***

- Follow non-HHS Federal agency procedure to obtain outside activity approval, as needed.
- Once any required outside activity approval is granted, the individual signs NIH Certification of Outside Activity Approval Form and submits it to DFO/SRO. DFO/SRO files (or provides to Committee Management staff to file) in the Official Meeting File.
- May use non-HHS Federal employment title and address, i.e., Scientist, VA for roster address.
- The individual's profile in eCommons must be modified to reflect a non-Federal email address (i.e., personal or non-Federal institution) for that individual to be enabled in IAR. A notation indicating that he/she is not performing peer review committee activities in an official capacity for his/her non-HHS Federal agency will be included on the roster as soon as technically feasible.
- See "Meeting Attendee" **or** "Nomination Slate – Details" Screens below from CMM for correct coding.
- Individual is eligible for reimbursement and consultant fees.

**Non-HHS Part-Time Federal Employee: *If attending as part of non-Federal/university appointment:***

- Individual signs NIH Certification of Outside Activity Approval Form and submits it to SRO/DFO. SRO/DFO files (or provides to Committee Management staff to file) in the Official Meeting File.
- Individual decides what address to use on the roster and communicates that to the DFO/SRO.

- The individual's profile in eCommons must be modified to reflect a non-Federal email address (i.e., personal or non-Federal institution) for that individual to be enabled in IAR. A notation indicating that he/she is not performing peer review committee activities in an official capacity for his/her non-HHS Federal agency will be included on the roster as soon as technically feasible.
- See "Meeting Attendee" or "Nomination Slate – Details" Screens below from CMM for correct coding.
- Individual is eligible for reimbursement and consultant fees.

## **CMM Instructions:**

### **Meeting Attendee Screenshot**

Once certified, these individuals are considered "NIH peer review consultants". As such, the "Meeting Attendee Screen" for the non-Federal employees should be coded as shown below. Entering it this way ensures that the individual will receive a non-Federal COI form.

The screenshot shows the "Edit Meeting Attendee" form in the eCommons system. The form is for Christopher R. Aiken (Person ID: 16574018). The fields are as follows:

Member Type *	Appointment Type *	Travel Type *	Appointment Num
SEP Member	New	Member Paid by Claim for Reimbursement/Voi	1420554
Scientific/Public Role *	Serving As Fed Staff *	Fed Employee *	Fed Employee Type
Scientific	No	No	
Proposed Start Date *	Proposed End Date *	Actual Start Date *	Actual End Date *
07/29/2020	07/29/2020	07/29/2020	07/29/2020

There is a "Special Qualification / Comment" text area at the bottom of the form, which is currently empty.

**\*Please note that the "Member Type" should always reflect the "type" of meeting being held, i.e., "SEP" or "Temporary".**

## Nomination Slate – Details Screenshot

**Nomination Data**

\* required field

Reason for adding nominee to Nomination List		Select Retiring Member:	
Replace a retiring member of the committee		MACKOW, ERICH (Type: Regular (not Chair)) (EndDate:06/30/202	
Member Type *	Appointment Type *	Member Designation *	
Regular (not Chair)	New	NIH Peer Review Consulta	
Scientific/Public Role *	Serving As Fed Staff *	Fed Employee *	Fed Employee Type
Scientific	NO	NO	
Travel Type *	COI Form Type		
Member Paid by Claim for Reimbursement/Voucher			