

**Implementing Procedures for the
NIOSH Policy on the Appearance of Bias for the EEOICPA Program &
General Conflict of Interest Requirements**

I. Introduction

The purpose of this document, which replaces the NIOSH Statement of Policy: Management of Conflict or Bias in the Radiation Dose Reconstruction Program, Rev. 2 (June 24, 2009) (COB Policy), is to provide NIOSH management and staff (classified as regular Government employees), the Advisory Board on Radiation and Worker Health (Advisory Board or Board) (classified as special Government employees, or “SGEs”), and HHS contractors and subcontractors (here termed Program Contractors) providing technical and other services to NIOSH and HHS in support of the EEOICPA program, with procedural guidance in carrying out their respective responsibilities under the NIOSH Policy on the Appearance of Bias for the EEOICPA Program & General Conflict of Interest Requirements (2010) (AOB Policy).

As set forth below, these procedures provide a step-by-step roadmap for handling conflict-of-interest and bias issues in a manner consistent with the NIOSH AOB Policy.

The first section describes reporting requirements – what type of information needs to be reported, who needs to submit a report, and to whom those reports should be submitted. The next section discusses review of the reported information, focusing on which persons have the responsibility to review those reports.

Following the subject of review, the procedures next address determinations and remedies. For determinations, the procedures set forth what the reviewing parties must determine to decide if a conflict or bias exists. If either is found to be present, the remedies section of the procedures describes what remedies may be available to permit an otherwise conflicted individual to participate in a particular matter; who may submit a request for a remedy; and what information the request should contain. The procedures then detail the criteria that will be used to determine if a requested remedy should be granted, as well as who has the power to grant such requests, and the conditions inherent in granting such requests.

The next section of the procedures lists both key Program functions (for example, dose reconstructor, SEC reviewer, document owner and site expert) and Program support functions (for example, multiple-site technical information bulletin owner and subject expert) and which functions may be performed by conflicted individuals under what circumstances (a more complete description of these functions is located in Appendix A to the procedures).

Finally, the procedures describe methods of publicly declaring, via both the Internet and at public meetings, individuals’ reported conflicts and biases that have been determined to exist, as well as any remedies issued to such persons.

Within each of the main categories listed above are subcategories that separately address the requirements as they apply to NIOSH, the Advisory Board, and Program Contractors. These requirements are found in statute (18 U.S.C. § 208, which addresses financial conflicts of interest) and regulation (5 C.F.R. § 2635.502, which is issued by the U.S. Office of Government Ethics (OGE) and addresses the appearance of loss of impartiality), in addition to the NIOSH AOB Policy (which

addresses appearance of bias). (Both 18 U.S.C. § 208 and 5 C.F.R. § 2635.502 are also contained in an Appendix to these procedures.) Nothing in these procedures should be read in any way to change or lessen the requirements outlined in the pertinent statute and regulations.

II. Reporting Matters of Potential Financial Conflict of Interest, Potential Appearance of Loss of Impartiality, and Appearance of Bias

This section explains what information needs to be reported, who needs to make such reports, and to whom the reports should be made.

A. Entities Required to Report

1. NIOSH management and staff involved in the EEOICPA program (including but not limited to those employees in the NIOSH Division of Compensation Analysis and Support (DCAS)).
2. Members of the Advisory Board on Radiation and Worker Health.
3. All Program Contractors (both companies and individuals) providing services to NIOSH and/or the Advisory Board in support of the EEOICPA program.

B. Information Required to be Reported

The following information is required to be reported by all individuals and companies falling under section II.A above:

1. Potential and Actual Financial Conflicts of Interest (governed by 18 U.S.C. § 208 for employees (including SGEs), and governed by the conflict-of-interest requirements of the Federal Acquisition Regulation (FAR) and those conflict-of-interest requirements incorporated into the contracts with CDC by the agency for contractors).
2. Potential Appearances of Loss of Impartiality (governed by OGE regulation 5 C.F.R. § 2635.502 for employees (including SGEs), and governed by the conflict-of-interest requirements of the Federal Acquisition Regulation (FAR) and those conflict-of-interest requirements incorporated into the contracts with CDC by the agency for contractors).
3. Potential Appearances of Bias (governed by the NIOSH AOB Policy).

C. Recipients of Reported Information

The information required to be reported under section II.B above is to be provided as follows:

1. NIOSH Employees

A. Financial Conflicts of Interest

NIOSH employees must report any financial holdings, interests and outside affiliations to the NIOSH Appearance of Bias/Conflict or Bias (AOB/COB) Officer¹ or the CDC Ethics Officer², or another NIOSH-designated individual, in writing, using the NIOSH conflict-of-interest disclosure form (attached as an Appendix to this document) provided for this purpose, and (for those NIOSH employees required to so file) the OGE Form 450,

¹ Currently, the NIOSH AOB/COB Officer is Frank Hearl, NIOSH Chief of Staff.

² Currently, the CDC Ethics Officer is Teresa Walker-Mason.

“Confidential Financial Disclosure Report,” which is filed with and reviewed by the CDC Ethics Office. If no form is available, the report should be made via either email or hardcopy. All such reports must be reviewed to determine what if any potential or actual conflicts exist.

B. Potential Appearance of Loss of Impartiality

NIOSH employees must report any potential appearances of loss of impartiality to the NIOSH AOB/COB Officer or the CDC Ethics Officer, or another NIOSH-designated individual, in writing, using the NIOSH conflict-of-interest disclosure form provided for this purpose. If no form is available, the report should be made via either email or hardcopy. All such reports must be reviewed to determine what if any potential or actual conflicts exist.

C. Potential Appearance of Bias

NIOSH employees must report any potential appearances of bias to the NIOSH AOB/COB Officer, or another NIOSH-designated individual, in writing, using the NIOSH conflict-of-interest disclosure form provided for this purpose. If no form is available, the report should be made via either email or hardcopy. All such reports must be reviewed to determine what if any potential or actual conflicts exist.

2. Advisory Board

A. Financial Conflicts of Interest

Advisory Board members must report any financial holdings, interests and outside affiliations by submitting the OGE Form 450, “Confidential Financial Disclosure Report,” and a copy of their curriculum vitae to the CDC Committee Management Office (CMO) or otherwise via email or hardcopy to the Designated Federal Official (DFO) for the Advisory Board, and by discussing potential conflicts with both these persons and attorneys in the Public Health (specifically, the Radiation Compensation Legal Team (RCLT)) and Ethics Divisions of OGC.³ All such reports must be reviewed to determine what if any potential or actual conflicts exist.

B. Potential Appearance of Loss of Impartiality

Advisory Board members must report⁴ any potential appearances of loss of impartiality to the DFO in writing, via either email or hardcopy, referencing the information described above in section II.C.2.A as needed. All such reports must be reviewed to determine what if any potential or actual conflicts exist.

C. Potential Appearance of Bias

Advisory Board members must report⁵ any potential appearances of bias to the DFO in writing, via either email or hardcopy, in the manner described above in section II.C.2.A. All such reports must be reviewed to determine what if any potential or actual conflicts exist.

³ Currently, the Designated Federal Official for the Advisory Board is Ted Katz.

⁴ This does not include appearances of loss of impartiality for which guidance has already been provided to the Board member by the DFO and/or CMO.

⁵ This does not include appearances of bias for which guidance has already been provided to the Board member by the DFO and/or CMO.

3. Program Contractors

A. Financial Conflicts of Interest

Program Contractors must report any financial holdings, interests and outside affiliations to their company's official designated to receive such reports, using the form created or adopted by the company for this purpose. In turn, that official must report any potential or actual conflict(s) in question to the contract officer's technical representative (COTR)⁶ with whom the company is engaged under its contract with the agency. If no form is available, the report shall be made in writing, via either email or hardcopy. All reports must be reviewed to determine what if any potential or actual conflicts exist.

B. Potential Appearance of Loss of Impartiality

Program Contractors must report any potential appearances of loss of impartiality to their company's official designated to receive such reports, using the form created or adopted by the company for this purpose. In turn, that official must report the matter in question to the contract officer's technical representative with whom the company is engaged under its contract with the agency. If no form is available, the report shall be made in writing, via either email or hardcopy. All reports must be reviewed to determine what if any potential or actual conflicts exist.

C. Potential Appearance of Bias

Program Contractors must report any potential appearances of bias to their company's official designated to receive such reports, using the form created or adopted by the company for this purpose. In turn, that official must report the matter in question to the contract officer's technical representative with whom the company is engaged under its contract with the agency. If no form is available, the report shall be made in writing, via either email or hardcopy. All reports must be reviewed to determine what if any potential or actual conflicts exist.

III. Review of Reported Information

This section explains which individuals are to review the reports discussed above, and on what type of matters the reviewers should focus.

1. NIOSH Employees

A. Financial Conflicts of Interest

All reports will be reviewed for potential or actual financial conflicts of interest by the CDC Ethics Officer, with potential input from the NIOSH AOB/COB Officer and other NIOSH and HHS officials, including the DCAS Director, as deemed necessary by the reviewing official.

⁶ Currently, the pertinent HHS contract officer technical representatives are Grady Calhoun (for ORAU); Ted Katz (for SC&A); J.J. Johnson (for ATL International); Jim Neton (for SENES and NCRP); and, for SRA, Leroy Turner (for Task Order 226), Chris Ellison (for TO 227), Dave Allen (for TO 228) and Lavon Rutherford (for TO 229). Should s/he deem it necessary to avoid potential or actual improper supervisory influence or other similar concerns, the NIOSH Director may assign a designee to fulfill some or all of the duties of a COTR as those duties are specified in these procedures.

- B. Potential Appearance of Loss of Impartiality
All reports will be reviewed for potential appearances of loss of impartiality by the CDC Ethics Officer or the NIOSH AOB/COB Officer, or other NIOSH-designated official, in consultation with the reporting individual and other HHS officials as deemed necessary by the reviewing official.
- C. Potential Appearance of Bias
All reports will be reviewed for potential appearances of bias by the NIOSH AOB/COB Officer, or other NIOSH-designated official, in consultation with the reporting individual and other HHS officials as deemed necessary by the reviewing official.

2. Advisory Board

- A. Financial Conflicts of Interest
All reports will be reviewed for potential or actual financial conflicts of interest by the DFO, in consultation with OGC attorneys in the Ethics Division and on the Radiation Compensation Legal Team within the Public Health Division, CDC Management Analysis and Services Office (MASO) staff and the affected Board member.
- B. Potential Appearance of Loss of Impartiality
All reports will be reviewed for potential appearances of loss of impartiality by the DFO, in consultation with OGC attorneys in the Ethics Division and on the Radiation Compensation Legal Team within the Public Health Division, CDC MASO staff and the affected Board member.
- C. Potential Appearance of Bias
All reports will be reviewed for potential appearances of bias by the DFO, in consultation with OGC attorneys in the Ethics Division and on the Radiation Compensation Legal Team within the Public Health Division, CDC MASO staff and the affected Board member.

3. Program Contractors

- A. Financial Conflicts of Interest
All reports will be reviewed for potential or actual financial conflicts of interest by the contracting company's project manager⁷, or other contractor designee, in consultation with the contract officer's technical representative⁸, the agency contract officer⁹, and agency and HHS officials (including the NIOSH AOB/COB Officer).
- B. Potential Appearance of Loss of Impartiality
All reports will be reviewed for potential appearances of loss of impartiality by the contracting company's project manager, or other contractor designee, in consultation

⁷ Currently, these individuals are Kate Kimpan (for ORAU), John Mauro (for SC&A), Thomas S. Tenforde (for NCRP), Vern McDougal (for ATL International), Warren Hoffman (for SENES), and Wendy Wise (for SRA).

⁸ As noted above, currently these individuals are Grady Calhoun (for ORAU); Ted Katz (for SC&A); J.J. Johnson (for ATL International); Jim Neton (for SENES and NCRP); and, for SRA, Leroy Turner (for TO 226), Chris Ellison (for TO 227), Dave Allen (for TO 228) and Lavon Rutherford (for TO 229).

⁹ Currently, these individuals are Flo Black (for ORAU), Ruben Cruz (for SC&A), Dwight Favors (for ATL International), Flo Black (for SENES), Dwight Favors (for NCRP) and John Carolan (for SRA).

with the contract officer's technical representative, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer).

C. Potential Appearance of Bias

All reports will be reviewed for potential appearances of bias by the contracting company's project manager, or other contractor designee, in consultation with the contract officer's technical representative, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer).

IV. Determinations and Remedies

A. Determinations

This section describes what the reviewing parties must determine to find that a conflict or bias exists.

1. NIOSH Employees

A. Financial Conflicts of Interest

In examining potential or actual financial conflicts of interest, the reviewing parties must determine if the NIOSH employee has a disqualifying financial interest and whether that financial interest is likely to be affected by the outcome of a particular matter with regard to a specific party, such as a Department of Energy (DOE) or Atomic Weapons Employer (AWE) facility, such that s/he should be prohibited from participating personally and substantially in an official capacity in that particular matter concerning that party.

B. Potential Appearance of Loss of Impartiality

With regard to a potential appearance of loss of impartiality, the reviewing parties must determine if a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of the NIOSH employee's household, or if the NIOSH employee has a covered relationship¹⁰ with a specific person or entity who is a party (or represents a party) to a particular matter, such that the employee's participation in his/her official capacity in that matter would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality, and that the NIOSH employee should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties.

C. Potential Appearance of Bias

With regard to a potential appearance of bias, the reviewing parties must determine whether the potential appearance of bias could raise questions as to the integrity of the

¹⁰ An NIOSH employee or Board member is deemed to have a covered relationship with: anyone with whom the employee has or seeks a business or financial relationship (other than a routine consumer transaction); a member of the employee's household; a relative with whom the employee has a close personal relationship; anyone with whom the employee's spouse, parent, or dependent child is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; any person with whom the employee has served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee within the past year; and any organization in which the employee is an active participant. See 5 C.F.R. § 2635.502(b)(1).

EEOICPA program and if the NIOSH employee should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties. (A list of many, albeit not all, circumstances that could lead to a potential appearance of bias for federal employees or contractors may be found in the NIOSH AOB Policy, which has also been reprinted in an appendix to these procedures.)

2. Advisory Board

A. Financial Conflicts of Interest

In examining potential or actual financial conflicts of interest, the reviewing parties must determine if the Advisory Board member has a disqualifying financial interest and whether that financial interest is likely to be affected by the outcome of a particular matter with regard to a specific party such as a Department of Energy (DOE) or Atomic Weapons Employer (AWE) facility, such that s/he should be prohibited from participating personally and substantially in an official capacity in that particular matter concerning that party.

B. Potential Appearance of Loss of Impartiality

With regard to a potential appearance of loss of impartiality, the reviewing parties must determine if a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of the Board member's household, or if the Advisory Board member has a covered relationship with a specific person or entity who is a party (or represents a party) to a particular matter, such that the SGE's participation in his/her official capacity in that matter would cause a reasonable person with knowledge of the relevant facts to question the SGE's impartiality, and that the Advisory Board member should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties.

C. Potential Appearance of Bias

With regard to a potential appearance of bias, the reviewing parties must determine whether the potential appearance of bias could raise questions as to the integrity of the EEOICPA program and if the Advisory Board member should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties.

3. Program Contractors

A. Financial Conflicts of Interest

With regard to potential or actual financial conflicts of interest, the contract officer's technical representative, in consultation with the contracting company's project manager (or other contractor designee), the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer) must determine if the contractor employee has a disqualifying financial interest and whether that interest is likely to be affected by the outcome of a particular matter with regard to a specific party, such as a DOE or AWE facility, such that s/he should be prohibited from participating personally and substantially in an official capacity in that particular matter concerning that party.

B. Potential Appearance of Loss of Impartiality

With regard to a potential appearance of loss of impartiality, the contract officer's technical representative, in consultation with the contracting company's project manager, or other contractor designee, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer) must determine if a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of the contractor employee's household, or if the contractor employee in question has a covered relationship with a specific person or entity who is a party (or represents a party) to a particular matter, such that the employee's participation in his/her official capacity in that matter would cause a reasonable person with knowledge of the facts to question the employee's impartiality, and that the employee should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties.

C. Potential Appearance of Bias

With regard to a potential appearance of bias, the contract officer's technical representative, in consultation with the contracting company's project manager, or other contractor designee, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer) must determine whether the potential appearance of bias could raise questions as to the integrity of the EEOICPA program and if the contractor employee should therefore be prohibited from participating in his/her official capacity in a particular matter involving specific parties.

B. Requests for Remedies

This section describes (where a conflict or bias is found to be present) who may submit a request for a remedy to allow the affected individual to participate in a particular matter; the proper content of such a request; and to whom such requests are submitted.

1. NIOSH Employees

A. Financial Conflicts of Interest

When the reviewing parties determine that a financial conflict of interest exists, and the DCAS Director (or his/her designee) believes that there is a need for the conflicted employee's participation in a particular matter of general applicability where such participation would otherwise be barred due to that conflict, the DCAS Director or designee may submit a written request for a waiver to the Designated Agency Ethics Official (DAEO)¹¹. The request shall describe in detail both the circumstances surrounding the financial conflict and the reasons why the need for the employee's participation in the particular matter of general applicability outweighs the possibility of the conflict adversely affecting the integrity of the employee's services in that matter.

B. Potential Appearance of Loss of Impartiality

When the reviewing parties determine that a potential appearance of loss of impartiality concern exists, and the DCAS Director or designee believes that there is a need for the conflicted employee's participation in a particular matter where such participation could otherwise be barred due to the employee's covered relationship with a specific party to that particular matter, the DCAS Director or designee may

¹¹ Currently, the DAEO is Ed Swindell, Associate General Counsel in the Ethics Division of OGC.

submit a written request for an authorization to the NIOSH Director. If the NIOSH Director believes the request should go forward, he shall submit the request to the CDC Ethics office, which will forward the request to the CDC Deputy Ethics Counselor (DEC)¹². The request shall describe in detail both the specific circumstances surrounding the potential appearance of loss of impartiality and the reasons why the need for the conflicted employee's participation in the particular matter outweighs the possibility that a reasonable person with knowledge of the relevant facts could question the employee's impartiality in this situation as a result.¹³

C. Potential Appearance of Bias

When the reviewing parties determine that a potential appearance of bias concern exists, and the DCAS Director or designee believes there is a need for the conflicted employee's participation in a particular matter involving specific parties where such participation might otherwise be barred due to the apparent bias, the DCAS Director or designee may submit a written request for an approval to the NIOSH AOB/COB Officer. The request shall describe in detail both the specific circumstances surrounding the potential appearance of bias and the reasons why the need for the conflicted employee's participation in the particular matter outweighs the concern that the program's integrity may be questioned as a result.¹⁴

2. Advisory Board

A. Financial Conflicts of Interest

When the reviewing parties determine that a financial conflict of interest exists, and the DFO (or his/her designee) believes there is a need for the conflicted Board member's participation in a particular matter of general applicability where such participation would otherwise be barred, the DFO or designee shall submit a written request for a waiver to the CDC MASO Director¹⁵. The request shall describe in detail both the circumstances surrounding the financial conflict and the reasons why the need for the Board member's participation in the particular matter of general applicability outweighs the possibility for the conflict to adversely affect the integrity of the Board member's services in the matter as a result.

B. Potential Appearance of Loss of Impartiality

When the reviewing parties determine that a potential appearance of loss of impartiality concern exists, and the DFO or designee believes there is a need for the conflicted Board member's participation in the particular matter in question where such participation could otherwise be barred due to the Board member's covered relationship with a specific party to that particular matter, the DFO or designee shall submit a written request for an authorization to the CDC MASO Director. The request shall describe in detail both the specific circumstances surrounding the potential appearance of loss of impartiality concern and the reasons why the need for the Board's member's participation in the particular matter outweighs the concern that a

¹² Currently, the DEC is Carlton Duncan.

¹³ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

¹⁴ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

¹⁵ Currently, the CDC MASO Director is Elaine Baker.

reasonable person with knowledge of the facts could question the integrity of the agency's programs and operations as a result.¹⁶

C. Potential Appearance of Bias

When the reviewing parties determine that a potential appearance of bias concern exists, the DFO or designee shall transmit this determination to the Board member in a guidance letter. If the DFO or designee and the Board member believe there is a need for the conflicted Board member to participate in the particular matter in question where such participation could otherwise be barred, the Board member shall submit a written request for an approval to the DFO or designee. The request shall describe in detail both the specific circumstances surrounding the potential appearance of bias concern and the reasons why the need for the Board member's participation in the particular matter in question outweighs the concern that the program's integrity may be questioned as a result.¹⁷

3. Program Contractors

A. Financial Conflicts of Interest

When the reviewing parties determine that a financial conflict of interest exists, and the contracting company's project manager (or his/her designee) to that employee's company believes that there is a need for the conflicted employee's participation in a particular matter of general applicability where such participation would otherwise be barred due to that conflict, the project manager or designee may submit a written request for a waiver to the COTR. The request shall describe in detail both the circumstances surrounding the financial conflict and the reasons why the need for the employee's participation in the particular matter of general applicability outweighs the possibility of the conflict adversely affecting the integrity of the employee's services in that matter.

B. Potential Appearance of Loss of Impartiality

When the reviewing parties determine that a potential appearance of loss of impartiality concern exists, and the contracting company's project manager (or his/her designee) to that employee's company believes there is a need for the conflicted employee's participation in the particular matter in question where such participation could otherwise be barred, the project manager or designee may submit a written request for an authorization to the COTR. The request shall describe in detail both the specific circumstances surrounding the potential appearance of loss of impartiality concern and the reasons why the need for the conflicted employee's participation in the particular matter in question outweighs the concern that the program's integrity may be questioned as a result.¹⁸

C. Potential Appearance of Bias

When the reviewing parties determine that a potential appearance of bias concern exists, and the contracting company's project manager or designee believes there is a need for that employee's participation in a particular matter where such participation

¹⁶ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

¹⁷ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

¹⁸ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

could otherwise be barred, the project manager or designee may submit a written request for an approval to the COTR. The request shall describe in detail both the specific circumstances surrounding the potential appearance of bias concern and the reasons why the need for the conflicted employee's participation in the particular matter in question outweighs the concern that the program's integrity may be questioned as a result.¹⁹

C. Remedies – Availability, and Factors Considered in Their Application

This section describes to what extent a remedy may be available, and which factors are to be considered by the party that would grant the requested remedy.

1. NIOSH Employees

A. Financial Conflicts of Interest

When a financial conflict of interest is found to exist, the conflicted employee is prohibited from participating in a particular matter that is likely to have a direct and predictable effect on that financial interest, and cannot participate in that particular matter until and unless s/he is issued a waiver in writing to do so. A waiver is not considered until the employee first advises the deciding parties of the nature and circumstances of the particular matter, and makes full disclosure of the conflicted financial interest. A waiver may then be issued only if it is determined by the DAEO that the disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. While a limited waiver may be issued to allow participation in particular matters of general applicability where a specific financial conflict exists, a waiver will **not** be issued to participate in a specific party-related matter that is the source of the conflict. **It should be noted that waivers are rarely granted for employees under any circumstances.**

B. Appearance of Loss of Impartiality

When an employee is determined to have an appearance of loss of impartiality concern regarding a particular matter involving specific parties, the employee may not participate in that matter until and unless s/he receives an authorization from his/her agency to do so. At that point, an analysis and determination is made, in light of all relevant circumstances, as to whether the interest of the government in the employee's participation in the matter outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

Factors that may be considered by the decision makers include:

- (i) the nature of the relationship involved;
- (ii) the effect that resolving the matter would have upon the employee's financial interests;
- (iii) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (iv) the sensitivity of the matter;
- (v) the difficulty in reassigning the matter to another employee; and

¹⁹ Specifically, the request should address the six balancing-test factors listed in section C.1.B below.

- (vi) adjustments that may be made to the employee's duties to reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

C. Appearance of Bias

When it is determined that an employee's participation in a particular matter involving specific parties would give rise to an appearance of bias concern, the employee may not participate in that matter until s/he has first requested, and received, an approval to so participate. An approval may be granted when it is determined, based on all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that the program's integrity may be questioned.

2. Advisory Board

A. Financial Conflicts of Interest

When a financial conflict of interest is found to exist, the conflicted Board member is prohibited from participating in a particular matter that is likely to have a direct and predictable effect on that financial interest, and cannot participate in that particular matter until and unless s/he is issued a waiver in writing to do so. A waiver will not be considered until the Board member first advises the deciding parties of the nature and circumstances of the particular matter, and makes full disclosure of the conflicted financial interest (via his/her financial disclosure report, and other information as necessary). The agency's determination must be based on a certification that the need for the Board member's services outweighs the potential for a conflict of interest created by the financial interest involved. While a limited waiver may be issued to allow participation in particular matters of general applicability where a specific financial conflict exists, a waiver will **not** be issued to participate in a specific party-related matter that is the source of the conflict.²⁰

B. Appearance of Loss of Impartiality

When an Advisory Board member is determined to have an appearance of loss of impartiality concern regarding a particular matter involving specific parties, that Board member may not participate in that matter until and unless s/he receives an authorization from his/her agency to do so. At that point, an analysis and determination is made, in light of all relevant circumstances, as to whether the interest of the government in the Board member's participation in the matter outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

Factors that may be considered include:

²⁰ In certain circumstances involving more broadly applicable issues, a Board member may also be eligible for a regulatory exemption. OGE regulation 5 C.F.R. § 2640.203(g) permits an SGE such as a Board member to participate "in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal respective employment, *provided* that the matter will not have a special or distinct effect on the employee or employer other than as part of a class." A determination of whether this exemption is applicable, and whether it should be granted to the Board member in question, is to be made by the same parties that determine remedies for Board members in other instances.

- (i) the nature of the relationship involved;
- (ii) the effect that resolving the matter would have upon the Board member's financial interests;
- (iii) the nature and importance of the Board member's role in the matter, including the extent to which the Board member is called upon to exercise discretion in the matter;
- (iv) the sensitivity of the matter;
- (v) the difficulty in reassigning the matter to another Board member; and
- (vi) adjustments that may be made to the Board member's duties to reduce or eliminate the likelihood that a reasonable person would question the Board member's impartiality.

C. Appearance of Bias

Where an Advisory Board member's participation in a particular matter involving specific parties is determined to present an appearance of bias concern, that Board member may not participate in that matter until s/he has first requested, and received, an approval to so participate. An approval may be granted when it is determined, based on all relevant circumstances, that the interest of the government in the Board member's participation outweighs the concern that the program's integrity may be questioned.

3. Program Contractors

A. Financial Conflicts of Interest

When a financial conflict of interest is found to exist, the conflicted contractor employee is prohibited from participating in a particular matter that is likely to have a direct and predictable effect on that financial interest, and cannot participate in that particular matter until and unless s/he is issued a waiver in writing to do so. A waiver is not considered until the employee first advises the deciding parties of the nature and circumstances of the particular matter, and makes full disclosure of the conflicted financial interest. A waiver may then be issued only if it is determined that the disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. While a limited waiver may be issued to allow participation in particular matters of general applicability where a specific financial conflict exists, a waiver will **not** be issued to participate in a specific party-related matter that is the source of the conflict. **It should be noted that waivers are rarely granted for contractor employees under any circumstances.**

B. Appearance of Loss of Impartiality

When a contractor employee is determined to have an appearance of loss of impartiality concern, that employee may not participate in a particular matter involving specific parties unless s/he first obtains an authorization in writing to do so. At that point, an analysis and determination is made, in light of all relevant circumstances, as to whether the interest of the government in the employee's participation outweighs the concern that the program's integrity could be questioned as a result.

Factors that may be considered include:

- (i) the nature of the relationship involved;
- (ii) the effect that resolving the matter would have upon the employee's financial interests;
- (iii) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (iv) the sensitivity of the matter;
- (v) the difficulty in reassigning the matter to another employee; and
- (vi) adjustments that may be made to the employee's duties to reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

C. Appearance of Bias

When it is determined that a contractor employee's participation in a particular matter involving specific parties (such as a DOE or AWE facility) would give rise to an appearance of bias concern, that individual may not participate in that matter without first obtaining an approval. Such an approval may be granted when it is determined, based on all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that the program's integrity may be questioned as a result.

D. Remedies continued – Granting and Issuance

This section describes which individuals may grant a remedy, and the circumstances attendant to the remedy's granting.

1. NIOSH Employees

A. Financial Conflicts of Interest

In instances involving financial conflicts of interest, waivers may only be issued by the DAEO, in consultation with the Ethics Division of the HHS Office of the General Counsel and attorneys in the Public Health Division of OGC. Waivers must be granted in writing, do not cover past conduct, and are only provided on a very limited, case-by-case basis at the discretion of the agency, based on the specific circumstances of the matter in question.

B. Appearance of Loss of Impartiality

In instances involving appearances of loss of impartiality, authorizations may be granted by the DEC, in consultation with attorneys in the Ethics and Public Health Divisions of OGC. Authorizations must be in writing and are granted on a case-by-case basis at the discretion of HHS, based on the specific circumstances of the matter in question.

C. Appearance of Bias

In instances involving appearances of bias, approvals may be granted by the NIOSHAOB/COB Officer, in consultation with attorneys in the Ethics and Public Health Divisions of OGC. Approvals must be granted in writing, and are provided on a case-by-case basis, based on the specific circumstances of the matter in question.

2. Advisory Board

A. Financial Conflicts of Interest

Where a financial conflict of interest is determined to exist, a waiver may be issued by the CDC MASO Director, in consultation with both the DFO and attorneys in the Ethics and Public Health Divisions of OGC. Waivers must be issued in writing, do not cover past conduct, and are granted only on a limited, case-by-case basis, at the discretion of the agency, based on the specific circumstances of the matter in question.

B. Appearance of Loss of Impartiality

In instances involving appearances of loss of impartiality, authorizations may be granted by the CDC MASO Director, in consultation with both the DFO and attorneys in the Ethics and Public Health Divisions of OGC. Authorizations must be made in writing, and are granted on a case-by-case basis at the discretion of HHS, based on the specific circumstances of the matter in question.

C. Appearance of Bias

In instances involving appearances of bias, approvals may be granted by the DFO, in consultation with the CDC Committee Management Officer and attorneys in the Ethics and Public Health Divisions of OGC. Approvals must be made in writing, and are granted on a case-by-case basis at the discretion of the agency, based on the specific circumstances of the matter in question.

3. Program Contractors

A. Financial Conflicts of Interest

In instances where a contractor employee is determined to have a financial conflict of interest, the employee must first obtain a waiver before participating in a particular matter of general applicability. A waiver is issued by the agency²¹ after a determination by the contract officer's technical representative, in consultation with the contract project manager, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer), that the interest of the government in the contractor employee's participation in the matter outweighs the concern that the program's integrity may be questioned. Waivers must be issued in writing, do not cover past conduct, and are granted only on a limited, case-by-case basis, at the discretion of the agency, based on the specific circumstances of the matter in question.

B. Appearance of Loss of Impartiality

In instances where it is determined that circumstances would cause a reasonable person with knowledge of the relevant facts to question a contractor employee's impartiality regarding specific party matters, the employee must first obtain an authorization before participating in that particular matter involving specific parties. An authorization is issued by the agency²² after a determination by the contract officer's technical representative, in consultation with the contract project manager, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer), that the interest of the government in the contractor employee's participation in the matter

²¹ The waiver must be signed by both the COTR or designee, and the NIOSH AOB/COB Officer.

²² The authorization must be signed by both the COTR or designee, and the NIOSH AOB/COB Officer.

outweighs the concern that the program's integrity may be questioned. An authorization is issued in writing, on a case-by-case basis, at the discretion of the agency, based on the specific circumstances of the matter in question.

C. Appearance of Bias

In instances where it is determined that a contractor employee's participation in a particular matter involving specific parties would give rise to an appearance of bias, the employee must first obtain an approval before participating in that particular matter involving specific parties. An approval is issued by the agency²³ after a determination by the contract officer's technical representative, in consultation with the contract project manager, the agency contract officer, and agency and HHS officials (including the NIOSH AOB/COB Officer), that the interest of the government in the contractor employee's participation in the matter outweighs the concern that the program's integrity may be questioned. An approval is issued in writing, on a case-by-case basis, at the discretion of the agency, based on the specific circumstances of the matter in question.

V. Key Program Functions and Program Support Functions

This section describes a number of Program functions integral to the EEOICPA Program, as well as which such functions may be performed by conflicted individuals with remedial documentation.

A. Key Program Functions

Key Program Functions (KPFs) include, but are not limited to, those activities integral to the EEOICPA Program that must be performed by individuals who do not have a financial conflict of interest, appearance of loss of impartiality concern, or appearance of bias concern (as those terms are defined in the NIOSH AOB Policy and its Implementing Procedures), with regard to the site(s) that are the subject of the key Program function(s). Accordingly, except as specified immediately below, a NIOSH employee or Program contractor employee may not perform any key Program function(s) for the site(s) where s/he is conflicted.

In the case of a **Site Expert**, whose value to the Program is inherently derived from his/her service at specific sites, his/her services may be utilized, subject to the following conditions: Not only does s/he require remedial documentation to provide controlled and attributed input of any type to a key Program function document or process, but the site expert's permitted duties must also be carefully delineated in advance of his/her participation, and that input, and any attendant conflicts, must be clearly attributed to the site expert wherever it appears in the subject document, and documented elsewhere as appropriate (for instance, by preserving formal notes of an interview with a site expert in the document record).

Similarly, a **Scientific/Technical Peer Reviewer** is permitted, subject to first receiving the appropriate remedial documentation, to conduct such reviews of key Program function documents concerning specific sites at which that reviewer may be conflicted.

Key Program functions have been determined to include the following (please see Appendix A for a more complete description of these functions):

²³ The approval must be signed by both the COTR or designee, and the NIOSH AOB/COB Officer.

1. Document Approval Authority
2. NIOSH AOB/COB Officer
3. Site Profile Document Owner
4. Site-Specific Technical Information Bulletin (TIB) Owner
5. SEC Petition Evaluation Report Owner
6. Case Manager
7. Dose Reconstructor
8. Dose Reconstruction Reviewer
9. Dose Reconstruction Report Peer Reviewer
10. Worker/Site Profile Reviewer
11. Lead Worker/Site Profile Reviewer
12. SEC Petition Reviewer
13. Lead SEC Petition Reviewer
14. Scientific/Technical Peer Reviewer
15. Author/owner of site-specific “white paper” or other product prepared for purposes of Board, Subcommittee, or Working Group discussion
16. Site Expert

B. Program Support Functions

Program Support Functions (PSFs) are those functions that are not tied to a specific site or sites and therefore are considered to involve particular matters of general applicability that present little or no risk of conflict of interest, or appearance of loss of impartiality or of bias, with regard to a conflicted individual. Accordingly, otherwise-conflicted individuals may generally perform these functions without having to obtain remedial documentation. PSFs include, but are not limited to, the following, as listed below (see Appendix A for complete descriptions):

1. Implementation Guide/General Guidance (IG/GG) Document Owner
2. Multiple-Site Technical Information Bulletin Owner
3. Subject Expert/Technical Specialist

VI. Declaring Conflicts/Biases

This section describes how the existence of individuals’ conflicts and biases, as well as any remedial documentation subsequently issued to those persons, is to be communicated to Program stakeholders, members of the public, and other interested parties.

Methods of Declaring Conflicts/Biases

1. Websites

A. NIOSH Employees

1. Financial Conflicts of Interest

In instances where a NIOSH employee is determined to have a financial conflict of interest with regard to a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which s/he is so conflicted shall be posted on the NIOSH/DCAS website, by employee name. A list of any waivers issued to that employee to allow him/her to work on matters involving an otherwise conflicted site or subject matter will also be posted.

2. Appearance of Loss of Impartiality

In instances where a NIOSH employee is determined to have an appearance of loss of impartiality concern with regard to a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which s/he is so conflicted shall be posted on the NIOSH/DCAS website, by employee name. A list of any authorizations issued to that employee to allow him/her to work on matters involving an otherwise conflicted site or subject matter shall also be posted.

3. Appearance of Bias

In instances where a NIOSH employee is determined to have an appearance of bias concern with regard to a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which s/he is so conflicted shall be posted on the NIOSH/DCAS website, by employee name. A list of any approvals issued to that employee to allow him/her to work on matters involving an otherwise conflicted site or subject matter shall also be posted.

B. Advisory Board

1. Financial Conflicts of Interest

In instances when an Advisory Board member has been determined to have a financial conflict involving a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which the Board member is conflicted shall be included in the Board member's "Conflict of Interest Disclosure Statement," which shall be posted on the NIOSH/DCAS website by Board member name. A list of the waivers granted to the Board member to permit his/her participation in otherwise conflicted matters shall also be posted.

2. Appearance of Loss of Impartiality

In instances when an Advisory Board member has been determined to have an appearance of loss of impartiality concern with regard to a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which the Board member is conflicted shall be included in the Board member's "Conflict of Interest Disclosure Statement," which shall be posted on the NIOSH/DCAS website by Board member name. A list of the authorizations granted to the Board member to permit his/her participation in otherwise conflicted matters shall also be posted.

3. Appearance of Bias

In instances when an Advisory Board member has been determined to have an appearance of bias concern with regard to a specific DOE or AWE facility and/or subject matter, a list of the sites and/or subject matters with which the Board member is conflicted shall be included in the Board member's "Conflict of Interest Disclosure Statement," which shall be posted on the NIOSH/DCAS website by Board member name. A list of the approvals granted to the Board member to permit his/her participation in otherwise conflicted matters shall also be posted.

C. Program Contractors

1. Financial Conflicts of Interest

In instances where a contractor employee is determined to have a financial conflict of interest with regard to a specific DOE or AWE facility and/or subject matter, that information shall be posted on the contractor's homepage in the employee's conflict-of-interest disclosure statement, retrievable by employee name. This statement shall also contain a list of all waivers granted to the employee to permit his/her participation in otherwise conflicted matters. Links to all such program contractor disclosure statements shall be provided on the NIOSH/DCAS website.

2. Appearance of Loss of Impartiality

In instances where a contractor employee is determined to have an appearance of loss of impartiality concern with regard to a specific DOE or AWE facility and/or subject matter, that information shall be posted on the contractor's homepage in the employee's conflict-of-interest disclosure statement, retrievable by employee name. This statement shall also contain a list of all authorizations granted to the employee to permit his/her participation in otherwise conflicted matters. Links to all such program contractor disclosure statements shall be provided on the NIOSH/DCAS website.

3. Appearance of Bias

In instances where a contractor employee is determined to have an appearance of bias concern with regard to a specific DOE or AWE facility and/or subject matter, that information shall be posted on the contractor's homepage in the employee's conflict-of-interest disclosure statement, retrievable by employee name. This statement shall also contain a list of all approvals granted to the employee to permit his/her participation in otherwise conflicted matters. Links to all such program contractor disclosure statements shall be provided on the NIOSH/DCAS website.

2. Public Meetings

A. NIOSH Employees

1. Financial Conflicts of Interest

In instances where a NIOSH employee is determined to have a financial conflict of interest, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that the meeting will be addressing the matter that poses the conflict. If the employee has a waiver that will allow him/her to be present at the meeting, the employee shall announce both his/her conflict and the waiver prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

2. Appearance of Loss of Impartiality

In instances where a NIOSH employee is determined to have an appearance of loss of impartiality concern, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that

the meeting will be addressing the matter that poses the conflict. If the employee has an authorization that will allow him/her to be present at the meeting, the employee shall announce both his/her conflict and the authorization prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

3. Appearance of Bias

In instances where a NIOSH employee is determined to have an appearance of bias concern, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that the meeting will be addressing the matter that poses the conflict. If the employee has an approval that will allow him/her to be present at the meeting, the employee shall announce both his/her conflict and the approval prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

B. Advisory Board

1. Financial Conflicts of Interest

In instances where an Advisory Board member is determined to have a financial conflict of interest, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or should leave the discussion and proceed to the back of the meeting room when the Board member becomes aware that the meeting will be addressing the matter that poses the conflict. If the Board member has a waiver that will allow him/her to be present at the meeting, the Board member shall announce both his/her conflict and the waiver prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.²⁴

2. Appearance of Loss of Impartiality

In instances where an Advisory Board member is determined to have an appearance of loss of impartiality concern, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or should leave the discussion and proceed to the back of the meeting room when the Board member becomes aware that the meeting will be addressing the matter that poses the conflict. If the Board member has an authorization that will allow him/her to be present at the meeting, the Board member shall announce both his/her conflict and the authorization prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

3. Appearance of Bias

In instances where an Advisory Board member is determined to have an appearance of bias concern, s/he should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or should leave the discussion and proceed to the back of the meeting room when the Board member becomes aware that the

²⁴ In such instances, the DFO may announce the Advisory Board member's recusal. Generally, the affected Advisory Board member (absent a waiver) may not be present at the meeting if the discussion will solely cover those sites/matters for which the member is conflicted.

meeting will be addressing the matter that poses the conflict. If the Board member has an approval that will allow him/her to be present at the meeting, the Board member shall announce both his/her conflict and the approval prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

C. Program Contractors

1. Financial Conflicts of Interest

In instances where a contractor employee is determined to have a financial conflict of interest, that employee should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that the meeting will be addressing the matter that poses the conflict. If the employee has a waiver that will allow him/her to be present at the meeting, the employee shall announce both his/her conflict and the waiver prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

2. Appearance of Loss of Impartiality

In instances where a contractor employee is determined to have an appearance of loss of impartiality concern, that employee should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that the meeting will be addressing the matter that poses the conflict. If the employee has been granted an authorization that will allow him/her to be present at the meeting in question, the employee shall announce both his/her conflict, and the authorization, prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

3. Appearance of Bias

In instances where a contractor employee is determined to have an appearance of bias concern, that employee should not attend any (or any portion of the) public meeting where that conflict may be pertinent, or must leave the discussion and proceed to the back of the meeting room when the employee becomes aware that the meeting will be addressing the matter that poses the conflict. If the employee has been granted an approval that will allow him/her to be present at the meeting in question, the employee shall announce both his/her conflict, and the approval, prior to speaking for the first time at the meeting, or when asked by the DFO during a full Board or Board working group meeting.

Appendices:

- A. Descriptions of Key Program Functions and Program Support Functions
- B. NIOSH Policy on the Appearance of Bias for the EEOICPA Program and General Conflict of Interest Requirements
- C. 18 U.S.C. § 208
- D. 5 C.F.R. § 2635.502
- E. NIOSH AOB Disclosure Form