

Ocean Exploration Advisory Board Conflict of Interest Policy Background

General

The Federal Advisory Committee Act (FACA) and its implementing regulation address conflict of interest issues in the context of ethics requirements for “Special Government Employees” (SGE). Except for specific language for the National Academy of Sciences (Academy) in FACA¹ that addresses what might be termed policy conflicts of interest, regulations and policies for conflict of interest focus on financial conflicts of interest and ethics requirements for SGEs that are similar to those for federal employees.

In response to the specific FACA provisions, the Academy issued a conflict of interest policy statement in May 2003.² The FACA language specific to the Academy and the Academy’s interpretation of that language is a useful guide for thinking about the Ocean Exploration Advisory Board (OEAB) because OEAB functions are similar to those of Academy committees. It defines “conflict of interest” as:

“any financial or other interest which conflicts with the service of the individual because it 1) could significantly impair the individual’s objectivity or 2) could create an unfair competitive advantage for any person or organization.”

The policy statement provides further guidance, including the following points relevant to the OEAB:

- The term “conflict of interest” means something more than individual bias. There must be an *interest*, ordinarily financial, that could be directly affected by the work of the committee.
- The term “conflict of interest” applies only to *current interests*. It does not apply to past interests that have expired, no longer exist, and cannot reasonably affect current behavior. Nor does it apply to possible interests that may arise in the future but do not currently exist because such future interests are inherently speculative and uncertain.

Other kinds of conflicts of interest that may be relevant to the OEAB are:

- *Access to Confidential Information:* The opportunity to have access to confidential information during the course of [Academy] committee activities . . . if abused or misused, may confer an unfair competitive advantage.
- *Reviewing Ones’ Own Work:* [. . .] an individual should not serve as a member of a committee with respect to an activity in which a critical review and evaluation of the individual’s own work, or that of his or her immediate employer, is the central purpose of the activity [. . .]

In 2004, Office of Management and Budget(OMB) instructed all agencies to adopt a conflict of interest policy for external peer review based on the Academy policy for committees described above to comply with Information Quality Act requirements. The NOAA Chief Information Officer (CIO) drafted a conflict of interest policy for external peer reviewers in response to the Office of Personnel Management and Budget (OPMB) directive that includes the Academy policy

¹ Federal Advisory Committee Act, section 15 (5a USC Rule – Requirements relating to the National Academy of Sciences and the National Academy of Public Administration
(<http://www.law.cornell.edu/uscode/text/5a/15>)

² http://www.nationalacademies.org/coi/bi-coi_form-0.pdf

verbatim.³ The NOAA Science Advisory Board has no conflict of interest statement or guidance beyond the ethics requirements that SGE's must meet, instead relying on case-by-case assessments.

OEAB

OEAB members will be SGEs and so subject to ethics requirements for SGE's. Although NOAA's use of the Academy policy relates to peer review, it is important to note that the policy was designed for FACA committees that operate much like the OEAB. Given the relatively small community in which we operate, a conflict of interest statement similar to the Academy policy, tailored slightly for the OEAB, would be of value.

³ http://www.cio.noaa.gov/services_programs/info_quality.html

Ocean Exploration Advisory Board Conflict of Interest Policy

It is essential that individuals serving as Ocean Exploration Advisory Board (OEAB) members not be compromised by any significant conflict of interest. For this purpose, the term "conflict of interest" means any financial or other interest which conflicts with the service of the individual on the OEAB because it could:

- (1) significantly impair the individual's objectivity or
- (2) create an unfair competitive advantage for any person or organization.

Except for those situations in which NOAA determines that a conflict of interest is unavoidable and promptly and publicly discloses the conflict of interest, no individual can be appointed to the OEAB if that individual has a conflict of interest that is relevant to OEAB's purpose and function.

OEAB members are expected to be familiar with the Summary of Ethics Rules for Special Government Employees and ~~the~~ (this?) OEAB Conflict of Interest Policy and to continuously monitor their personal situations for conflicts of interest.

General Principles

Involves an Interest

The term "conflict of interest" means something more than individual bias. There must be an *interest*, ordinarily financial, that could be directly affected by the work of OEAB members.

Conflict of interest requirements are objective and preventive. They are not an assessment of one's actual behavior or character, one's ability to act objectively despite the conflicting interest, or one's relative insensitivity to particular dollar amounts of specific assets because of one's personal wealth. Conflict of interest requirements are objective standards designed to eliminate certain specific, potentially compromising situations from arising, and thereby protect the individual, other OEAB members, NOAA, and the public interest. The individual, the other OEAB members, and NOAA should not be placed in a situation where the findings and conclusions of an OEAB recommendation, review, or other action could be reasonably

questioned, and perhaps discounted or dismissed, simply because of the existence of conflicting interests.

Applies Only to Current Interests

The term "conflict of interest" applies only to *current interests*. It does not apply to past interests that have expired, no longer exist, and cannot reasonably affect current behavior. Nor does it apply to possible interests that may arise in the future but do not currently exist, because such future interests are inherently speculative and uncertain. For example, a pending formal or informal application for a particular job is a current interest, but the mere possibility that one might apply for such a job in the future is not a current interest.

To avoid potential conflict of interest or to avoid the appearance of conflict of interest, OEAB members may not:

- 1) participate in a matter –including by giving advice or making a recommendation—in which they have a financial interest;
- 2) receive non-competitive grants or contracts from the Office of Ocean Exploration and Research to augment, supplement, or support OER expeditions, operations, or programs; or,
- 3) participate in a matter—including by giving advice or making a recommendation—in which someone with whom they have a close business or personal relationship is (or represents) a party to the matter.

Potentially Affects the Interests of Others

The term "conflict of interest" applies not only to the personal financial interests of the individual but also to the *interests of others* with whom the individual has substantial common financial interests if these interests are relevant to the functions to be performed. Thus, in assessing an individual's potential conflicts of interest, consideration must be given not only to the interests of the individual but also to the interests of the individual's spouse and minor children, the individual's employer, the individual's business partners, and others with whom the individual has substantial common financial interests. Consideration must also be given to the interests of those for whom one is acting in a fiduciary or similar capacity (e.g., being an officer or director of a corporation, whether profit or nonprofit, or serving as a trustee).

Covers a Broad Range of Financial Interests

The term "conflict of interest" as used herein ordinarily refers to *financial* conflicts of interest. In assessing potential conflicts of interest in connection with an individual's service as OEAB member, particular attention will be given to the following kinds of *financial interests* if they are relevant to the functions to be performed:

- Employment relationships (including private and public sector employment and self-employment);
- Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, and serving as an expert witness in litigation);
- Stocks, bonds, and other financial instruments and investments including partnerships;
- Real estate investments; patents, copyrights, and other intellectual property interests;
- Commercial business ownership and investment interests;
- Service provided in exchange for honorariums and travel expense reimbursements;
- Research funding and other forms of research support; and,
- Financial ties to entities regulated by NOAA, other stakeholders and NOAA itself.

Limits Access to Confidential Information

During the course of conducting OEAB business, the opportunity to have access to confidential information, if abused or misused, may confer an unfair competitive advantage. If an individual during the course of participating in a peer review for NOAA obtains and uses, or intends to use, confidential information not reasonably available to the public for the individual's own direct and substantial economic benefit, such conduct constitutes a conflict of interest. The same rule applies if the individual discloses, or intends to disclose, such information (albeit lawfully) to other individuals or to organizations in such a manner that a direct and substantial economic benefit may be conferred on such individuals or organizations. These restrictions do not apply to information once it has entered the public domain.

In some situations - for example, access to confidential or proprietary information - special limitations on access to and use of such information will be imposed. Substantial legal penalties may apply for noncompliance. In addition, an individual employed by or associated with a particular organization or enterprise should not be given access to proprietary information of a competitor or potential competitor unless appropriate safeguards have been established that reasonably protect the interests of all parties. Otherwise, such access may create an unfair competitive advantage, as well as possible liability for improper disclosure and use. For further guidance regarding access to confidential information, contact the NOAA Office of the General Counsel.

Limits Reviews of One's Own Work

Individuals serving as OEAB members could find that their own published and professional work, in common with others in the field, is part of the technical basis and literature an OEAB deliberation. This ordinarily would not constitute a conflict of interest. However, an individual should not participate in an OEAB deliberation when a critical review and evaluation of the individual's own work, or that of his or her immediate employer, is a central purpose of the review, because that would constitute a conflict of interest, although such an individual may provide relevant information to the peer reviewers.

Public Statements and Positions

An individual may have become committed to a fixed position on a particular issue through public statements (e.g., testimony, speeches, interviews), through publications (e.g., articles, books), through close identification or association with the positions or perspectives of a particular group, or through other personal or professional activities. This would ordinarily constitute a potential source of bias but not a conflict of interest. However, in situations where there is some significant, directly related interest or duty of the individual - e.g., where the individual is currently president of a professional society that espouses the same fixed position on the issue - the situation may constitute a conflict of interest.

Remedies

In some cases, an individual's personal and professional interests as defined in this policy are so closely related to NOAA program activities that being a member of the OEAB would represent a real or perceived conflict of interest. Such a candidate should not be selected to serve. If such a conflict emerges after a board member has begun to serve, the board member would be expected to resign.

In other cases, where such personal and professional interests are more limited—where, for example, an OEAB member competes for and receives an award from OER for research funding

—an individual is expected recuse him- or herself from particular OEAB deliberations, recommendations, or other actions where a conflict of interest may, or may appear to be, present. Further, an individual who receives an award from OER for exploration or research funding may not serve as chair or vice chair of the OEAB.

I agree to follow the OEAB Conflict of Interest Policy

[OEAB Member]

[Date]