



## DEPARTMENT OF LABOR

### Secretary's Order 10-2020—Statement of Policy Regarding Independence of Advisory

#### Committee Members

**ACTION:** Notice.

#### SUPPLEMENTARY INFORMATION:

1. **Purpose.** To strengthen the quality and reliability of advice provided by advisory committees to the Department of Labor, by identifying factors to be used in selecting committee members that will increase transparency in the disbursement of taxpayer dollars, enhance public confidence in advisory committees, and promote efficiency in the selection of candidates to serve on advisory committees.
2. **Authorities and Directives Affected.**
  - A. Authorities. This Order is issued pursuant to the following authorities:
    1. 29 U.S.C. § 551 *et seq.*;
    2. 5 U.S.C. §§ 301–02; and
    3. 5 U.S.C. app. 2 §§ 1–15.
  - B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order.
3. **Definitions.**

“**Committee**” means any advisory committee, committee, board, task force, or working group to which the Secretary of Labor or the designee of the Secretary appoints individuals subject to the Federal Advisory Committee Act (FACA), and the subcommittees of such bodies. This term does not include internal committees, boards, task forces, or working groups, or apply to purely interagency committees, boards, task forces, or working groups.

“**Organization**” means any organized concern, whether legally recognized or otherwise.
4. **Background.**

The Department's Committees provide advice and recommendations that agency heads and other decision-makers may use in fulfilling the Department's mission of promoting the welfare of the American workforce. The Department sponsors several Committees, which focus separately on the use of labor market data, employee benefit plans, job training programs, international labor standards, trade agreement policy, and worker safety and health.

Under FACA, Committees can be established by Congress, the President, or the Department. FACA requires that all Committees operate in an independent, orderly, balanced, and transparent manner. Membership selection is a critical step in fulfilling these goals. All members must be qualified and knowledgeable in their respective fields, and must be positioned to offer counsel and advice independent of any motive other than the best interests of the Department and those it serves. Unless otherwise provided by statute, Presidential directive, or other authority establishing a Committee, the Secretary or his designee has the authority and responsibility to appoint Committee members. This authority includes the prerogative to establish eligibility and selection criteria to ensure the Department receives the best advice possible from a broad spectrum of experts and stakeholders. This statement of policy sets forth factors to consider in selecting members to help ensure these FACA requirements are met.

This Policy Statement is intended to provide notice to the public and direction to the Department on how the Secretary or his designees will consider the financial interests of potential Committee members. Policies and requirements are already in place which prohibit Committee members from participating in certain matters in which they have a financial interest. *See* 18 U.S.C. § 208; 5 C.F.R. Part 2640; DLMS 1604(A), 1605(C), 1614(E). This Policy Statement is not intended to change or add to those provisions,

create any mandatory rules restricting otherwise-eligible individuals from serving on Committees, or to affect the fair balance of Committee members required by FACA.<sup>1</sup> Instead, this Statement serves the separate purpose of aiming to ensure that the Department receives high-quality advice and that the public has confidence in the expertise of Committee members. The Department's portfolio of contracts and grants has grown over time, as have the number of laws and regulations on which Committee members may be asked to provide advice, increasing the circumstances where Committee members may be called to provide advice on Department programs as to which their professional judgment may be influenced, or appear to be influenced, by their financial interests. This influence or appearance of influence may not rise to the level of an ethical or legal concern covered by existing laws and policies, but may nonetheless diminish the integrity of advice given the Department in ways that are inconsistent with the Department's interest in obtaining the most reliable and impartial advice possible. This Statement helps guard against such concerns. Further, this Statement promotes public confidence in the Department by helping to ensure that advice given to the Department is free of bias, and instead solely reflects Committee members' experience and expertise.<sup>2</sup>

## **5. Responsibilities.**

- A. The Deputy Secretary is delegated authority and assigned responsibility for issuing written guidance, as necessary, to implement this Policy Statement.
- B. The Solicitor of Labor is responsible for providing legal advice to the Department on all matters arising in the implementation and administration of this Policy Statement.

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<sup>1</sup> The Department's current FACA Committees comprise representatives of employees, employers, experts in fields such as economics and occupational health and safety, and the general public. The Department does not believe its contracts and grants go disproportionately to any one of these groups, or that any large percentage of any of these groups is in receipt of Department contracts or grants. Special provisions have been made in § 6(B) of this Statement for employees of state, local and tribal entities, as those entities do regularly and predictably receive Department funding.

<sup>2</sup> On the public's confidence in public institutions, see, for example, Pew Research Center, "Americans' View of Government: Low Trust, but Some Positive Performance Ratings" (September 14, 2020), <https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-but-some-positive-performance-ratings/>; Gallup, "Confidence in U.S. Institutions Still Below Historical Norms" (June 15, 2015), [news.gallup.com/poll/183593/confidence-institutions-below-historical-norms.aspx](https://news.gallup.com/poll/183593/confidence-institutions-below-historical-norms.aspx).

6. **Factors for Consideration.** In making Committee appointments, the Secretary or his designee will consider whether prospective Committee members are sufficiently financially independent from the Department programs and activities for which they may be called upon to provide advice.

A. In circumstances where a prospective member (or any spouse, parent, or child of a prospective member) is:

(i) a principal investigator or co-investigator on a research project funded by a Department grant;

(ii) an officer or employee of an Organization in receipt of a Department grant; or

(iii) an officer or employee of an Organization in receipt of disbursements under a contract with the Department,

the Secretary or his designee will consider whether the grant or contract in question is so directly related to the Department programs, activities, or other matters about which the prospective member may be called upon to provide advice that it would cause an objective, disinterested observer to entertain a significant doubt about the prospective member's ability to provide independent, high-quality advice to the Department with respect to such programs, activities, or other matters.

B. Except under the circumstances described in § 6(A)(i), a prospective member's position (or any spouse's, parent's, or child's position) as an officer or employee of an institution of higher education or a state, tribal, or local government agency shall not be considered when determining whether the prospective member is sufficiently independent from the relevant Department programs and activities.

C. The purpose of this Policy Statement is to improve the quality of advice given to the Department and should be followed to the extent it accomplishes that objective. For instance, some Committee members are called upon to provide

advice with respect to national security or veterans affairs, or are part of a Committee that involves other federal agencies or international bodies, where heavy reliance on the factors above may impede rather than further the Department's ability to obtain quality advice. The Secretary or his designee may give less weight to the factors above when doing so is in the best interests of the Department.

7. **Certification.** Candidates for Committee membership subject to this Policy Statement shall provide, in writing, sufficient information for the Secretary or his designee to consider the factors articulated in § 6(A) of this Statement, in such form as the Secretary or his designee may prescribe.

8. **Application and Exceptions.**

A. This Policy Statement shall apply only to the appointments or reappointments of individuals to Committees made after the Effective Date of this Statement.

B. This Policy Statement shall not apply to ex officio members.

C. This Policy Statement shall not apply to members and prospective members of the Advisory Board on Toxic Substances and Worker Health.<sup>3</sup>

D. This Policy Statement shall not apply to appointments made by someone other than the Secretary or his designee.

E. In cases where a Committee member's independence comes into question for a reason articulated under § 6 of this Order after his appointment, the Committee member may serve the remainder of his term on such Committee. The member should, however, consider recusing himself from providing advice to the Department on any programs or activities as to which he would not be considered financially independent under this Statement.

9. **Privacy.** This Policy Statement is subject to the applicable laws, regulations, and procedures concerning the privacy of Committee candidates.

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<sup>3</sup> Congress has previously enacted specific protections regarding the independence of these Committee members.

10. **Controlling Law; Administrative Matters.** This Policy Statement is intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other law governing the composition of a particular Committee. If a conflict arises, the specific statute, Executive Order, or other law shall govern. The appointment considerations articulated in this Statement are in addition to internal administrative procedures regarding the appointment of individuals to Committees.
11. **Redelegation of Authority.** Except as otherwise provided within this Policy Statement or by law, all authorities delegated in this Order may be redelegated to serve the purposes of this Statement.
12. **Effective Date.** This Order is effective immediately.

Signed in Washington, DC, this 2nd day of November, 2020.

Eugene Scalia,  
Secretary of Labor.

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