NIH Policy Manual

2300-310-1 - Nepotism

Issuing Office: OD/OM/OHR/CPD **Phone:** (301) 496-0377

Approving Official(s): OHR Director

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter provides NIH policy and procedure on nepotism with minor revisions to add clarity in some areas, updates to hyperlinks, and reflect change in issuing office. Including:
    - Minor language updates to the background section that makes it clearer that the policy applies to all employees, not just public officials.
    - Added clarity to definitions for employees to include appointed services.
    - New revision includes updates to remove sex specific pronouns and an overall review to remain in compliance with the 5-year policy review requirement.
2. **Filing Instructions:**

Remove: NIH Manual Chapter 2300-310-1 – Nepotism, dated 09/22/2017.
Insert: NIH Manual Chapter 2300-310-1 – Nepotism, dated: 04/10/2023.

PLEASE NOTE:

- Contact the Issuing Office, listed above, for questions regarding this chapter.
- For information regarding the NIH Policy Manual, go to https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx

A. Purpose

This document provides the National Institutes of Health (NIH) policy on nepotism.

B. Background

Nepotism is inappropriate action related to the appointment, employment, promotion, or advancement of a relative, recommending that a relative receive an award, or the advocacy of such actions for the benefit of a relative.

C. Scope

This policy applies to all types of employment at NIH,[1] including employees in the Competitive Service, Excepted Service (including Title 42 and Pathways), Federal Wage System, Commissioned Corps, Senior Executive Service, and the Senior Biomedical Research Service. In addition, this policy also applies to selections for and advancement through non-employment training programs (including the Visiting Fellowship Program and the Intramural Research Training Award Program), Guest Researchers, Special Experts, regular experts and consultants, and professional service contracts.

This policy does not apply to Special Volunteers and individuals serving on other types of voluntary assignments.

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[1] The NIH will continue to honor all current Collective Bargaining Agreements and will implement this policy consistent with the Agreements and its obligations under law, rule or regulation.

D. Policy

The NIH establishes supervisory, managerial relationships with its employees in full compliance with nepotism restrictions to enhance fairness in employment practices and avoid improprieties or the appearance of nepotism. In addition to employee-employer relationships, these management practices extend to training opportunities and other relationships in which individuals are assigned to NIH, but are not Federal employees (e.g., Intramural Research Training Awards, Guest Workers, Visiting Fellows).

In addition, certain workplace relationships are not defined as nepotism, yet may be inappropriate. Actions based on or taken because of those relationships should be avoided even though the relationship, itself, is not subject to the nepotism restriction. Decisions or actions that are based on or that imply favoritism due to personal relationships are inappropriate and may warrant corrective/disciplinary action.

E. References

1. Title 5, United States Code (U.S.C.), Section 3110 – Employment of Relatives; Restrictions
2. Title 5, U.S.C., Section 2302 (b)(7) – Prohibited Personnel Practices
3. 18 U.S.C., Section 208 – Acts Affecting a Personal Financial Interest
4. 5 Code of Federal Regulations (C.F.R.), Part 310 – Employment of Relatives
5. 5 C.F.R., Section 2635.502 – Personal and Business Relationships
6. 5 C.F.R. Part 630, subparts B, H, I, J, and K, definitions as modified June 14, 2010, by U.S. Office of Personnel Management final regulations (75 FR 33491).

F. Definitions

For purposes of this chapter the following definitions apply. To the extent any included term is defined by the U.S. Office of Personnel Management (OPM), those published by OPM take precedence:

1. **Advocacy** – Any action which promotes, defends, endorses, supports, or pleads the cause of another person. Actions which reveal an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement are considered advocacy.
2. **Appointment and Employment** – Discretionary personnel actions including hires, reinstatements, transfers, reassignments, and details.
3. **Chain of Command** – The line of personnel with supervisory authority that runs from an employee to the Director of the NIH and the Secretary of the Department of Health and Human Services.
4. **Domestic Partner** – An adult in a committed relationship with another adult, including both same sex and opposite-sex relationships, as defined in 5 CFR § 875.101.
5. **Employee –** For the purpose of this policy, "employee," means an officer or an individual who is appointed in the civil service and engaged in the performance of a Federal function under authority of law or an executive act. *In this policy, use of the term 'employee' includes those individuals who have public official status, employee status, and non-Full Time Equivalent Intramural Research Training Award Program.*
6. **Promotion and Advancement** – Discretionary personnel actions which increase an employee's grade, pay, or potential for advancement. Included are assignment of performance ratings, quality step increases, within–grade increases, cash, time–off, or honor awards and selection for training opportunities, which could lead to promotion.
7. **Public Official** (5 U.S.C. §3110(a)(2)) – an officer, a member of the uniformed service, an employee and/or any other individual, in whom is vested the authority by law, rule or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in NIH.
8. **Relative** – An individual who is related to an employee as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandchild, grandparent, father–in–law, mother–in–law, son–in–law, daughter–in–law, brother–in–law, sister–in–law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, legal guardian, or Domestic Partner.

G. Responsibilities

1. **Institute, Centers, and Offices (ICOs) Management is Responsible for:**

    a. Advising ICO employees on questions and concerns regarding nepotism;
    b. Ascertaining to the extent possible (i.e., without violating the privacy of employees) that their organization is free from nepotism or the appearance of nepotism;

c. Taking all reasonable actions to prevent nepotism or the appearance of nepotism within their ICO;
d. Reporting relationships involving nepotism to the ICO Director, and with the advice and assistance of the Office of Human Resources (OHR), initiating appropriate action, including corrective measures, up to disciplinary action when required, to correct the situation;
e. Maintaining records of relationships regarding nepotism along with reports of any corrective actions or modifications in assignments taken to avoid problems from such relationships; and
f. Designating appropriate individuals to provide review of pertinent documentation or other mechanisms not under their jurisdiction (e.g., Intramural Research Training Award assignments).

2. **OHR is Responsible for:**

   a. Providing advice to ICOs on how to resolve problem cases, including appropriate disciplinary action that can be taken, if necessary; and
   b. Developing and communicating policies regarding the prohibition of nepotism at NIH.

3. **Employees are Responsible for:** Recusal from any actions that would violate nepotism restrictions and/or have the appearance of such violation.

H. Restricted Activities

1. **Advocacy**

   a. An NIH employee may not Advocate (orally or in writing) for a relative's appointment, employment, promotion, or advancement anywhere within their own ICO, other ICOs, or other NIH organizational components over which the employee has jurisdiction, influence, or control.
   b. An NIH employee who recommends a relative, or recommends a relative to another employee for appointment, employment, promotion, or advancement is deemed to have engaged in advocacy.

2. **Personnel Actions**

   a. An NIH employee may not hire, supervise, promote, or advance their own Relative.
   b. An individual may not be hired, employed, promoted, or advanced to a position in any ICO where their hire, employment, promotion, or advancement has been advocated by a public official who exercises jurisdiction or control over that ICO and is related to that individual.
   c. An NIH employee may not, knowingly, appoint, employ, promote, advance, or advocate on behalf of an individual who has been recommend or advocated for by their Relative.

d. An NIH employee may not participate on a rating panel for a position that a Relative has applied to.
e. An NIH employee may not rate a Relative's job performance.
f. An NIH employee may not recommend or grant a Relative a step or salary increase, or monetary or time-off award.
g. An OHR employee may not audit or classify positions held by their Relative.
h. If a Relative of an OHR employee applies for a position in an area serviced by that employee, the case will be reassigned to another OHR employee for processing.

Exception – An individual with veterans' preference, priority placement program, reemployment priority, or Career Transition Assistance Plan/Interagency Career Transition Assistance Plan eligibility may be appointed to a vacant position supervised by one of their relatives, if the preference eligible is within reach on an appropriate certificate of eligibles and an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible. If the preference eligible is a Relative of the selecting official, the formal selection decision must be made by an official at a level above that of the original selecting official. The second-level official must then make any subsequent discretionary personnel decisions concerning the preference employee. Note: There should be a documented effort to find this individual another placement within the ICO/NIH before making a final determination on having a Relative be the supervisor.

1. **Supervisory Relationship between Relatives -** An NIH employee may not directly or indirectly supervise a Relative, and cases where a direct or indirect supervisory relationship between Relatives exists must be addressed immediately.
2. **Other Supervisory or Management Relationships -** While workplace relationships may not always be defined as nepotism, some activities may present potential conflicts of interest because of those relationships. Decisions or actions that are based on or imply favoritism due to personal relationships are inappropriate and may warrant corrective/disciplinary action.

I. Standards of Ethical Conduct

The Standards of Ethical Conduct for Employees of the Executive Branch require that all employees take appropriate steps to avoid even the appearance of loss of impartiality when performing their official duties. Thus, unless the employee has prior clearance through an ethics official, an employee must not participate in a matter that would affect a personnel action or the compensation interest of, among others, their spouse or dependent children and should not participate in such matters that would affect the interests of a member of their household, or a person who is a Relative with whom the employee has a close personal relationship. The test of an appearance of conflict of interest is whether a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.

J. Corrective Actions and Penalties

When a violation of the nepotism regulations or policy occurs, corrective action(s) will be taken to remedy the situation as soon as possible, e.g., employee reassigned or reporting relationships restructured so that a direct or indirect supervisory relationship is terminated. Where it is not feasible to transfer or reassign an employee from the organizational supervision of a Relative, justification for the continued supervisory relationship must be submitted to and approved by the ICO Director, or in cases where approval by the ICO Director is not appropriate, by the Director of NIH. If the justification is approved, all personnel decisions regarding the lower-level employee must be made by an official higher in the chain of command than the higher-level official who approved the justification.

In those cases where direct or indirect supervisory relationships exist between Relatives, and a reassignment or transfer is not feasible, OHR will provide advice and assistance to higher level management in restructuring reporting relationships to eliminate a conflict of interest. employees found to have violated nepotism regulations or policy may face corrective/disciplinary action which will be proposed on a case-by-case basis, depending on the severity of the violation(s) involved.

Individuals who have benefited from inappropriate nepotism-based decisions are also subject to corrective actions up to and including removal, rescission of the action, and the elimination of any pay and benefits improperly received.