The General Counsel
Washington, DC 20201

ADVISORY OPINION 26-01 ON THE ROLE OF ENTITIES FUNDED, REGULATED, CONTRACTED AND OTHERWISE ENGAGED BY HHS PROGRAMS AND OPERATIONS IN THE NOMINATION OF HHS OFFICIALS FOR AWARDS, PRIZES, AND OTHER SIMILAR HONORS BASED ON MERITORIOUS PUBLIC SERVICE OR OTHER ACHIEVEMENT

AUGUST 25, 2026

This Advisory Opinion addresses the role of non-federal entities funded, regulated, contracted and otherwise engaged by HHS programs and operations in the nominations of HHS officials for awards, prizes and other honors recognizing meritorious public service or other achievements. In particular, it expressly informs such entities that involvement in such nominations at the behest of the intended award recipient may constitute involvement in a federal official's violation of the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards of Ethical Conduct) and is not to be viewed as a means to curry favor with an official who has authority over government matters involving or of interest to the solicited entity.

Background

Recently published records detail various activities of Dr. Anthony Fauci during his tenure as Director of the National Institute of Allergy and Infectious Diseases (NIAID) at the National Institutes of Health (NIH). Email records from the years prior to and during the COVID-19 pandemic reflect his efforts to capitalize on his federal position, including by actively soliciting nominations for non-federal awards, prizes, and other honors from individuals affiliated with institutions funded and otherwise engaged by the NIAID and by directing subordinate staff to participate in the compilation of nomination package materials to be submitted by individuals associated with grantee institutions.[1]

[1] One such effort resulted in an award of approximately $900,000 in 2021 (the Dan David Prize). Dr. Fauci used his official position to solicit or coerce his nomination for the gift. Dr. Fauci coordinated with a Principal Investigator (PI) who received $378,524 of NIAID funding the year of the solicited nomination and $364,649 of NIAID funding the year following the nomination. In the aggregate, the PI received over $1,000,000 of NIAID funding during Dr. Fauci's tenure. If the facts as they are now known had been presented at the time of legal review in 2021 (*e.g.*, if Dr. Fauci had disclosed that he had coordinated the nomination for the award with a NIAID PI grant recipient) OGC would have advised NIH leadership to consider review of the propriety of Dr. Fauci's actions in this particular or any similar case and, more broadly, to take appropriate actions to protect the integrity of NIH programs. To be clear, OGC has no authority to rescind the monetary award or require Dr. Fauci to return the value of the award to the grantor *ex post*.

Analysis

The Standards of Ethical Conduct generally prohibit employees of the Executive Branch from soliciting and from accepting gifts from prohibited sources or given because of the employee's official position. 5 C.F.R. § 2635.202(a)(1) and (2). Under an exception to these rules, however, employees are permitted to accept gifts associated with *bona fide* awards, prizes and other honors for meritorious public service or achievement bestowed by non-federal entities if certain conditions are met. 5 C.F.R. § 2635.204(d). But they may not rely on this exception: (1) to accept a gift in exchange for being influenced in the performance of an official act; (2) to accept gifts so frequently that a reasonable person would be led to believe the employee was using their public office for personal gain; (3) where the employee uses or permits the use of the employee's position or authority associated with public office to solicit or coerce the offering of a gift; or (4) to accept a gift in violation of statute, executive order, or supplemental regulation. 5 C.F.R. § 2635.205. Additionally, employees of the National Institutes of Health who have responsibility for matters affecting the award donor cannot accept from such donor gifts associated with awards that are valued in excess of $200, or that are cash or an investment interest, and they must obtain written approval before accepting any award under 5 C.F.R. § 2635.204(d). 5 C.F.R. § 5501.111.

"Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain." 5 C.F.R. § 2635.101(b)(1). Moreover, executive branch employees are admonished that they "shall endeavor to avoid any actions creating the appearance that they are violating the law or the [government-wide] ethical standards." 5 C.F.R. § 2635.101(b)(14). Executive branch employees "may not use or permit the use of their Government position or title, or any authority associated with their public office, in a manner that is intended to coerce or **induce another person**, including a subordinate, to provide any benefit, financial or otherwise, to the employee…." (Emphasis added.) 5 C.F.R. § 2635.702(a). Although employees can be nominated and may be allowed to accept *bona fide* awards for meritorious public service and achievement and any associated gifts, they must nevertheless abide by the misuse of position standard.

When the government-wide Standards of Ethical Conduct were first promulgated, the Office of Government Ethics (OGE) rejected a proposal submitted by two federal agencies and one external organization to modify **"induce"** with "improperly" because inserting the word "would suggest that there are ways in which an employee may properly invoke his or her official title, position or authority specifically to induce another person to provide a benefit to the employee or to another person with whom he or she has a relationship as specified." 57 Fed. Reg. 35006, 35030 (August 7, 1992) (preamble). Moreover, an employee's use of title, position or authority to coerce or induce another to provide a benefit may be found to violate the misuse of position standard even if the benefit is not, itself, a "gift" (*i.e.*, a thing having monetary value) under the Standards of Ethical Conduct. Any benefit, financial or otherwise, is covered. Thus, an employee who uses his or her title, position, or authority to cause or persuade another person to nominate them or contribute to a nomination of them for an award to be bestowed by a non-federal entity may be in violation of the misuse of position standard and subject to administrative action on that basis.[2]

HHS has long recognized that care must be exercised to avoid legal, ethical, and public perception issues in all interactions involving non-Federal entities with which the Department must engage to accomplish its mission. It is acknowledged that solicitations for any favor or benefit directed to such entities may cause those targeted for entreaty to sense an opportunity to curry favor with the government requestor and expect reciprocal consideration by the government when the solicited entity seeks governmental action. This is especially true when the entreaty is directed to a prohibited source,[3] directly or through its agent or employee, and made by or at the behest of a government official who has official responsibility for government matters affecting the solicited entity. A potential conflict or appearance thereof inheres in any situation where a government official asks an external party for a favor and is also in a position to regulate or otherwise do business with those parties. Accordingly, an employee who solicits an award nomination from a prohibited source, directly or through its agent or employee, may be in violation of the misuse of position standard and subject to administrative action on that basis.

In sum, it is the view of the Office of the General Counsel that solicitation by an HHS employee who is an intended award recipient of support or nomination for awards, prizes and other honors recognizing meritorious public service or achievement from non-federal entities funded, regulated, contracted and otherwise engaged by HHS programs and operations over which the intended recipient has authority warrants investigation under the Standards of Ethical Conduct. Solicited entities are encouraged to work with agency officials properly exercising their management and operational authorities to secure recognition of their staff members rather than with the intended employee recipient.

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[2] This discussion does not prohibit or restrict efforts undertaken by agency officials under appropriate management and operational authorities to secure recognition of their staff members through official agency nominations submitted to award programs. Nor does it prohibit or restrict the participation of agency staff in contributing to or compiling such nominations within the scope of their official duties.

[3] "Prohibited source" means any person or entity seeking official action from, doing business with or regulated by the employee's agency, or that has interests substantially affected by the performance or nonperformance of the employee's official duties, or that is an organization a majority of whose members are any of these types of persons or entities. 5 C.F.R. § 2635.203(d).