



CANCER PREVENTION & RESEARCH
INSTITUTE OF TEXAS

MEMORANDUM

TO: OVERSIGHT COMMITTEE MEMBERS
FROM: WAYNE R. ROBERTS, CHIEF EXECUTIVE OFFICER
SUBJECT: SECTION 102.1062 WAIVER – REVIEW COUNCIL MEMBERS
DATE: AUGUST 8, 2018

Waiver Request and Recommendation

I request that the Oversight Committee approve a fiscal year 2019 conflict of interest waiver for review council members pursuant to Health & Safety Code § 102.1062 “Exceptional Circumstances Requiring Participation.” Unlike other conflict of interest waivers that the Oversight Committee has approved previously, this waiver is not granted for a specific conflict of interest or person. Instead, CPRIT intends to invoke this waiver as necessary to address the unusual scenario when a review council member has a conflict with a grant application that is part of the larger group of proposals that the review panel or review council must act upon (usually to recommend for awards). The waiver is necessary for a review council member to participate in the overall discussion and vote on the slate of award recommendations. This waiver is the same waiver the Oversight Committee approved for FY 2018.

Although it would be ideal to consider each instance individually before granting the conflict of interest waiver, a prospective waiver is necessary in this scenario given the timing of the review process and scheduled Oversight Committee meetings. It is unlikely that review panel schedules will align with Oversight Committee meeting dates such that CPRIT will be able to secure a conflict of interest waiver in time for the review council member to participate in the review process. However, adequate protections are in place that, together with the waiver’s proposed limitations, mitigate the opportunity for factors other than merit and established criteria to influence review council members’ decisions regarding the award of grant funds.

Background

Health & Safety Code § 102.1062 directs the Oversight Committee to adopt administrative rules governing the waiver of the conflict of interest requirements of the statute in exceptional circumstances. CPRIT’s administrative rule § 702.17(3) authorizes the Oversight Committee to approve a waiver that applies for all activities affected by the conflict during the fiscal year. The rules require that a majority of the Oversight Committee members must vote to approve the waiver. CPRIT must report any approved waiver to the lieutenant governor, speaker of the

house of representatives, the governor, and the standing committees of each house of the legislature with primary jurisdiction over CPRIT matters.

The issue addressed by this waiver results from of the role review council members play in the review process. At the review panel level, the review council member chairs the review panel meeting. Occasionally, a review council member will identify a conflict of interest with an application assigned to the member's panel. If CPRIT is unable to reassign the application to a different panel, then the review council member follows the process set forth in CPRIT's conflict of interest rules and recuses himself or herself from any discussion, scoring, deliberation, or vote on the application. The proposed waiver will not change the review council member's responsibility to disclose the conflict or to recuse from the review of the application.

The difficulty arises when the review council member must lead the discussion, in his or her role as chair of the review panel, about the group of applications the panel recommends moving forward to the review council. If the application with which the review council member is in conflict advances as part of the group that scored well enough to move forward, the review council member's participation in the discussion on the group as a whole violates the member's agreement to not participate in "any discussion" of the conflicted application.

A similar challenge arises at the review council level. If the application with which the member is in conflict is part of the group considered by the review council, the conflict of interest rules prohibit the member from participating in the review council's discussion or vote on the group of awards. The review council member is unable to address questions about other applications heard by his or her panel due to his or her recusal from the process, potentially disadvantaging the other applications.

Exceptional Circumstances Requiring the Review Council Member's Participation

In order to approve a conflict of interest waiver, the Oversight Committee must find that there are exceptional circumstances justifying the conflicted individual's participation in the review process. In this case, exceptional circumstances exist due to the necessity of the review council member's participation in the process to develop the overall award recommendation slates and the Oversight Committee should grant the proposed waiver. The limitations mitigate the potential for bias.

CPRIT's administrative rules require the Chief Compliance Officer to attend or designate an independent third party to attend peer review meetings and review council meetings when the panel discusses grant applications. The third-party observer must document that the reviewers follow CPRIT's grant review process consistently, including observing CPRIT's conflict of interest rules. The third-party observer will document any violation of this waiver in his or her written report, which CPRIT provides to the Oversight Committee prior to the vote on the award recommendations.

Proposed Waiver and Limitations

In granting the conflict of interest waiver, I recommend that CPRIT permit the review council member to continue to perform the following activities and duties associated with CPRIT's review process subject to the stated limitations:

1. The review council member must disclose any conflict in writing pursuant to the electronic grant management process CPRIT has in place.
2. The review council member must recuse himself or herself from participation in the review, discussion, scoring, deliberation, and vote on the specific grant(s) identified as the conflict.
3. When the review panel or review council takes up the grant applications as a group, the review council member may participate in the discussion and vote on the proposed awards, so long as the review council member does not advocate for or against the application that the member has identified as a conflict.
4. Whenever CPRIT invokes this waiver, the Chief Compliance Officer will provide information about the use of the waiver, including the name of the review council member and the identified conflict, in the Chief Compliance Officer's Certification report. I will also include this information in the CEO affidavit I submit for the grant award mechanism.

Due to the nature of the conflict or the type of review process, this conflict of interest waiver will not apply to following:

- When the review council member's conflict of interest is a conflict described by T.A.C. § 702.13(c); or
- When the review council is acting as the only review panel in the review process (e.g. CPRIT recruitment awards and prevention dissemination awards.)

Important Information Regarding this Waiver and the Waiver Process

- The Oversight Committee may amend, revoke, or revise this waiver, including but not limited to the list of approved activities and duties and the limitations on duties and activities. Approval for any change to the waiver granted shall be by a vote of the Oversight Committee in an open meeting.
- CPRIT limits this waiver to review council members operating under the circumstances specified in this request.