



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460**

**OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD
STAFF OFFICE**

November 26, 2019

MEMORANDIUM

SUBJECT: Formation of the Economic Guidelines Review Panel (EGRP) under the Science Advisory Board (SAB)

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The EPA relies on the Guidelines for Preparing Economic Analyses when evaluating the economic consequences of its regulations and policies. By providing a sound scientific framework for performing economic analyses, the Guidelines ensure that EPA regulations not only contribute to a safe environment but also a healthy economy. Approaches established in the Guidelines on important subjects such as uncertainty, timing, and valuation of costs and benefits, promote the consistent treatment of these issues in all economic analyses at the EPA. Because of their prominence and importance to Agency analyses, it is critical that the Guidelines reflect the most current, peer-reviewed and established practices in the economics profession and that the document itself be peer reviewed. The Office of Policy, with input from other Agency economists, has been working to improve the Guidelines by updating and revising selected chapters as appropriate, many of which have not been revised since 2010. The Office of Policy (OP) has requested that the Science Advisory Board (SAB) peer review the revised Guidelines.

This memorandum addresses the set of determinations that were used in forming the Economic Guidelines Review Panel under the Science Advisory Board.

1. The type of review body that will be used to conduct the review, and the nature of the review;
2. The types of expertise needed to address the general charge;

3. Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed;
4. How regulations concerning “appearance of a loss of impartiality” pursuant to 5 C.F.R. § 2635.502 apply to members of the augmented committee;
5. Other considerations that might affect the objectivity of members of the augmented committee; and
6. How individuals were selected for the augmented committee.

DETERMINATIONS:

1. The type of review body that will be used to conduct the review, and the nature of this review.

The Economic Guidelines Review Panel (EGRP) consists of subject matter experts selected to provide advice through the chartered SAB on the revised guidelines developed by OP staff. The chair of the Panel will be a member of the chartered SAB and the Panel’s report(s) will be reviewed by the chartered SAB before they are transmitted to the EPA Administrator.

2. The types of expertise needed to address the general charge.

On June 12, 2019 the EPA SAB Staff Office announced in a Federal Register Notice (Volume 84, Number 113, Pages 27327-27328) that it was forming the Economic Guidelines Review Panel. The SAB Staff Office sought public nomination of nationally and internationally recognized scientists in one or more of the following areas; environmental economists with extensive experience and expertise estimating benefits and/or costs of environmental outcomes, conducting and/or evaluating benefit cost analyses, and assessing distributional effects, including economic impacts of environmental regulation.

3. Financial conflict of interest consideration, including identification of parties who are potentially interested in or may be affected by the topic reviewed.

a) Identification of parties (or class of parties) whose financial interests may be affected by the matter to be reviewed:

The EPA relies on the Guidelines for Preparing Economic Analyses when evaluating the economic consequences of its regulations and policies. The Guidelines ensure that EPA regulations not only contribute to a safe environment but also a healthy economy. Approaches established in the Guidelines on important subjects such as uncertainty, timing, and valuation of costs and benefits, promote the consistent treatment of these issues in all economic analyses at the EPA.

This review of the Guidelines will not focus on any particular environmental policy issue. *Thus, this Panel’s deliberations will not be focused on the interests of specific parties or a discrete and identifiable class of parties.*

b) Conflict of interest considerations: For Financial Conflict of Interest (COI) issues, the basic 18 U.S.C. § 208 provision states that: “An employee is prohibited from participating *personally or substantially* in an official capacity in any *particular matter* in which he, to his knowledge, or any person whose interests are imputed to him under this statute has a *financial interest*, if the particular matter will have a *direct and predictable effect* on that interest [emphasis added].” For a conflict of interest to be present, all elements in the above provision must be present. If an element is missing the issue does not involve a financial conflict of interest; however, the general provisions in the appearance of impartiality guidelines still apply and need to be considered.

i. Does the general charge to the Panel involve a particular matter? A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interest of specific people, or a discrete and identifiable class of people.” It does not refer to “...consideration or adoption of broad policy options directed to the interests of a large and diverse group of people.” [5 C.F.R. § 2640.103(a)(1)]. A particular matter of specific party means a particular matter that is focused on the interests of a specific party [5 C.F.R. § 2640.102(m)].

The activity of the Review Panel and SAB Committee members for the purpose of addressing the charge for peer review of the draft document titled “Guidelines for Preparing Economic Analyses”, *will qualify as a particular matter of general applicability because the resulting advice will be part of a deliberation and under certain circumstances that advice could involve the interests of a discrete and identifiable class of people but does not involve specific parties. That group of people constitutes those who are performing or using economic analysis, including policy makers, the Agency's Program and Regional Offices, and contractors providing economic reports to the EPA.*

ii. Will there be personal and substantial participation on the part of the panel members? Participating personally means direct participation in this review. Participating substantially refers to involvement that is of significance to the matter under consideration. [5 C.F.R. §2640.103(a)(2)].

For this review, the SAB staff office has determined that the Review Panel and SAB Committee members will be participating personally in the matter. Committee members will be providing the Agency with independent advice and recommendations on the development of the draft document “Guidelines for Preparing Economic Analyses”, and such advice is expected to directly influence the Agency’s guidance on future development of economic analyses. Therefore, participation in this review will be substantial.

iii. Will there be a direct and predictable effect on panel members’ financial interests? A direct effect on a participant’s financial interest exists if “... a close causal link exists between any decision or action to be taken in the matter on the financial interest. A particular matter does not have a direct effect ... if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are

independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy is not considered to have a direct effect.” [5 C.F.R. § 2640.103(a)(ii)]. The ethics regulations include an exemption allowing special government employees (SGEs) serving on federal advisory committees to participate in any particular matter of general applicability where the disqualifying financial interest arises from their non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class [5 C.F.R. § 2640.203(g)]. (This exemption does not include the interests of an SGE arising from the ownership of stock in his employer or prospective employer.)

For this review, the SAB staff office has determined that the work conducted by the Panel will not have a direct and predictable financial effect on any members financial interests.

For a conflict of interest to be present, all elements in the above provision must be present. If an element is missing the issue does not involve a financial conflict of interest; thus no COI has been identified by the SAB staff office.

4. How regulations concerning “appearance of a loss of impartiality” pursuant to 5 C.F.R. § 2635.502. apply to members of the Panel.

The Code of Federal Regulations at 5 C.F.R. § 2635.502(a) states that: “Where an employee knows that a *particular matter involving specific parties* is likely to have a **direct and predictable** effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the person determines that the circumstances would cause a **reasonable person** with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and has received authorization from the agency designee.” Further, § 2635.502(a)(2) states that, “An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.”

5. Other considerations that might affect the objectivity of members of the Panel.

Members of SAB panels must be scientific and technical experts who are objective and open-minded, able to engage in deliberative discussions with scientists who may have disparate perspectives. To evaluate candidates, the SAB Staff Office considers information provided by candidates (including on the EPA Form 3110-48), and information independently gathered by SAB staff.

As part of a determination that committee members are objective and open-minded on the topic of the review, and consistent with the agency’s Peer Review Policy, the SAB Staff Office considers previous involvement in the matter before the augmented committee. This

evaluation includes responses provided by candidates to the following supplemental questions:

- (a) Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?
- (b) Have you had any current or previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.
- (c) Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.
- (d) Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

The SAB Staff Office has determined that there is no reason to believe that the members selected for the Panel would not be objective and open-minded and able to engage in deliberative discussions with scientists who may have disparate points of view on the matter before the augmented committee.

6. How individuals were selected for the augmented committee.

On July 29, 2019, the SAB Staff Office posted a list of 17 candidates, identified based on their expertise and willingness to be considered for the panel. This list was accompanied by a notice inviting public comments on the list of candidates, to be submitted by August 19, 2019. The SAB Staff Office received three comments from the public on this list of candidates.

The SAB Staff Office Director makes the final decision about who serves on the augmented committee based on all of the relevant information, including a review of each candidate's confidential financial disclosure form (EPA Form 3110-48), the responses to the questions above, and information independently gathered by SAB Staff.

For the SAB Staff Office, a balanced committee or panel is characterized by candidates who possess the necessary domains of scientific knowledge, relevant perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the general charge. Specific criteria to be used in evaluating an individual panel member include: (a) scientific and/or technical expertise, knowledge, and experience; (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality pursuant to 5 C.F.R. § 2635.502; (e) skills working on advisory committees and panels (including objectivity and open-mindedness); and (f) for the committee as a whole, diversity of scientific expertise and viewpoints.

Economic Guidelines Review Panel (EGRP) Members

On the basis of the above-specified criteria, the members of the EGRP reviews are as follows:

- Dr. John Graham - Indiana University, **CHAIR**
- Dr. Joe Aldy - Harvard University
- Dr. Spencer Banzhaf - Georgia State University
- Dr. Don Black - University of Chicago
- Dr. Caroline Cecot - George Mason University
- Dr. Karen Clay - Carnegie-Mellon University
- Dr. Scott Farrow - University of Maryland, Baltimore County
- Dr. Art Frass - Resources for the Future
- Dr. Don Fullerton - University of IL – Urbana-Champaign
- Dr. Craig Landry - University of Georgia
- Dr. Arik Levinson - Georgetown University
- Dr. Josh Linn - University of Maryland
- Dr. Richard Williams - Retired Fed worker (FDA)

Concurred,

/s/

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11/26/19

Date