

NATIONAL INSTITUTES OF HEALTH
Revised Interim Policy for NIH Challenges
January 5, 2016

I. PURPOSE

This Revised Interim Policy for NIH Challenges (“NIH Challenge Policy” or “Policy”) provides the National Institutes of Health (NIH) with updated policies and procedures for developing, reviewing, approving, and administering NIH Challenges under Section 105 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, P.L. 111-358, codified at 15 U.S.C. 3719 (the “America COMPETES Act”). Compliance with this Policy will help NIH Institutes and Centers (ICs) avoid unauthorized expenditure of appropriations and will assist ICs in complying with applicable regulatory and statutory mandates.

This NIH Challenge Policy modifies the interim policy issued in October 2011. The substantive changes include, but are not limited to, the following:

- The NIH Challenge Policy is more limited in scope than the 2011 interim policy. The NIH Challenge Policy applies only to NIH Challenges with a monetary prize (defined below).
- The NIH Challenge Policy permits an NIH Institute or Center Director to approve NIH Challenges up to \$50,000 in monetary prizes without consulting the NIH Division of Program Coordination, Planning, and Strategic Initiatives or obtaining legal review through the Office of the General Counsel. A table identifying approving authority at various monetary prize levels is provided under the section entitled, “**IX. CHALLENGE CLEARANCE AND APPROVAL.**”
- The NIH Challenge Policy is accompanied by the *Federal Register Notice Requirements for NIH Challenges* including a sample template. The template provides formatting instructions and policy assistance for the development of the *Federal Register* notice for NIH Challenges.

NIH will update this Policy as needed after gaining additional experience with its implementation. In addition, ICs may develop their own policies and procedures for handling NIH Challenges as long as they are consistent with the NIH Challenge Policy, subsequent revisions, and any relevant laws, regulations, and policies.

II. DEFINITIONS

The following terms as used in this Policy have the meaning set forth below whether or not the terms are capitalized.

Award-approving Official: An individual typically within the NIH IC sponsoring the NIH Challenge who may approve a monetary prize for NIH Challenges. This person is generally the IC Director or one of his/her direct reports. The name or position of the award-approving official must be included in the *Federal Register* notice.

Challenge: Any contest or prize competition conducted pursuant to the America COMPETES Act in which a monetary prize(s) is offered to a winning participant(s) and success depends on meeting the established criteria for award.

Challenge Approval (also “Approval”): The process by which the appropriate NIH official or the HHS Secretary with authority to administer and fund monetary prizes for an NIH Challenge and, subject to NIH Delegations of Authority, provides the requisite signature on the *Federal Register* notice to announce an NIH Challenge in the *Federal Register*.

Challenge Clearance (also “Clearance”): The process by which the appropriate NIH officials provide comments on an NIH Challenge before it is approved (see “Challenge Approval”) for publication in the *Federal Register*. In general, an IC must satisfactorily address all clearance comments from NIH official(s) responsible for providing Challenge Clearance before the NIH Challenge is announced in the *Federal Register*.

Challenge Manager: For each IC interested in sponsoring an NIH Challenge, the person designated by the NIH IC Director who is responsible for administering, managing, coordinating, planning, implementing, and recommending that NIH fund an NIH Challenge.

Challenge Review (also “Review”): A service performed by the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI) and the Office of the General Counsel (OGC) for NIH Challenges exceeding \$50,000 in monetary prizes.

Challenge Solicitation: A publicly available document published in the *Federal Register* by which a federal agency makes known its intentions to award a monetary prize.

Challenge Submission: A Participant’s response to a Challenge solicitation. HHS guidance may refer to Challenge submissions as Challenge applications or simply applications or submissions.

Monetary Prize: Cash awarded for a winning Challenge submission in response to an NIH Challenge. A prize does not include recognition awards for a winning entry, or other ways of recognizing an NIH Challenge winner that are not readily valued. Although not usually considered a “monetary prize”, contracts may also be awarded as prizes for NIH Challenges. For simplicity, the definition of Monetary Prize includes both cash and contracts awarded as prizes for NIH Challenges.

NIH Challenge: A prize competition issued under the America COMPETES Act by the NIH alone or in collaboration with another HHS Operating Division or other federal entity in which the prize is funded, in whole or in part, by NIH appropriated funds or other NIH-funding source (e.g., gift funds) and is awarded to one or more individuals, teams of individuals, or entities external to the NIH. An NIH Challenge is subject to the NIH Challenge Policy issued as part of implementing the America COMPETES Act. Other Competitions (as defined) are exempt from this Policy. See Exemptions, below, for additional details.

Other Competitions: A term used to distinguish between NIH Challenges under the America COMPETES Act and other prize competitions that may be held by NIH, but do not trigger NIH consideration as part of implementing the America COMPETES Act.

Participant: An individual, team of individuals, or entity that has registered to participate in an NIH Challenge in response to a Challenge Solicitation and has not yet been awarded a monetary prize. Participants are sometimes also referred to as solvers, applicants, or contestants.

Revised Interim Policy for NIH Challenges (also “NIH Challenge Policy” or the “Policy”): The collective contents of this policy document and its companion piece, the *Federal Register Notice Requirements for NIH Challenges*. These documents replace and supersede in its entirety the NIH Interim Policy on Challenges issued on October 22, 2011.

III. INTRODUCTION

Under the America COMPETES Act, a Challenge may be one or more of the following:

1. A point solution prize competition that rewards and spurs the development of solutions for a particular, well-defined problem;
2. An exposition prize competition that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties;
3. A participation prize competition that creates value during and after the competition by encouraging competitors to change their behavior or develop new skills that may have beneficial effects during and after the competition; or
4. Such other types of prize competitions as NIH considers appropriate to stimulate innovation that has the potential to advance its mission.

NIH Challenges can be used to advance the NIH’s mission by stimulating innovation. Potential benefits include:

1. Establishing a goal without predetermination of the most likely way to achieve the goal;
2. Paying only for results;
3. Increasing the number and diversity of individuals or organizations that address a specific problem or challenge of significance to the NIH mission;
4. Stimulating private sector investment so the winning result could be greater than the cash value of the monetary prize; and
5. Furthering the NIH mission by attracting more interest and attention to a defined program, activity, or issue of concern.

An NIH Challenge may be used when it is determined to be the best means available to achieve a specified and authorized agency purpose. For example, NIH ICs may award monetary prizes through an NIH Challenge:

1. To promote solutions for a scientific or public health need, e.g., Flu Prevention Campaign;
2. To stimulate creative solutions to a scientific problem, e.g., develop a new point-of-care technology;
3. In response to a solicitation for a specific outcome, solution, idea for a solution, or product; or
4. To promote the application of NIH research data to address a public health or medical problem.

IV. BACKGROUND – THE AMERICA COMPETES ACT AUTHORITY

On January 4, 2011, the President signed into law the [America COMPETES Act](#), thereby providing federal agencies with the authority to conduct Challenges to spur innovation, solve problems, and advance their core mission. On April 22, 2011, the Department of Health and Human Services (HHS) Secretary gave the NIH Director (and other agency heads) the [authority to administer and fund Challenges](#), which was [further delegated within NIH](#) on October 18, 2011. Among other things, the America COMPETES Act:

1. Provides explicit authority to conduct Challenges while establishing a framework for the prize archetype, award size, cross-agency collaboration and partnerships, and seeking external expertise; and
2. Establishes basic Challenge requirements (e.g., announcing the Challenge, judging, funding, [liability](#), and eligibility).

V. APPLICABILITY

This NIH Challenge Policy applies to any NIH Challenge (as defined in section II, above).

Exceptions

This Policy does not apply to Other Competitions (as defined in section II, above) including, but not limited to, competitions

1. In which the prize purse is funded wholly with resources from an outside entity, such as foundations, nonprofit organizations, or other federal entities. For this exception to apply, none of the prize purse can be funded by NIH appropriated or gift funds.
2. Where NIH contributes only intellectually, i.e., by providing publicly available data sets, participating in its planning, or otherwise providing technical support.
3. Without a monetary prize (e.g., public recognition of prize recipient, such as posting a winning entry on the NIH website).
4. Open only to the NIH workforce (e.g., IC newsletter naming competitions, the Annual Campus Relay), awards made to NIH employees (e.g., performance, on-the-spot awards), or those that apply to NIH fellows (e.g., the Fellows Award for Research Excellence). Trainees, volunteers, and contractors are considered part of the NIH workforce. ICs should consult existing NIH rules and policies for administering those activities or awards.

VI. EXPENDITURE MECHANISMS

A. Available Expenditure Mechanisms

Several expenditure mechanisms are available to NIH to award monetary prizes. These include:

1. Appropriated Funds

The America COMPETES Act authorizes agencies to utilize existing appropriations, so long as the expense of a Challenge is a “necessary expense” of the underlying appropriation, or the underlying legal authorities which are the object of the appropriation. Such a determination, however, must be made on a case-by-case basis in consultation with the NIH Challenge Manager. All regular appropriations laws still apply.

NIH Challenge prize funds must come from the same fiscal year the Challenge solicitation is announced in the *Federal Register*. For example, an NIH Challenge supported with FY2015 funds must be published in the *Federal Register* between October 1, 2014 and September 30, 2015 with an obligation of funds recorded in the NIH Business System.¹ Once the obligation is recorded, payment of the prize can be made in a future fiscal year. Typically, these funds are available for disbursement for five years after the obligation is recorded.

2. Gift Funds

Gift funds may be used to fund, in whole or in part, an NIH Challenge monetary prize as long as their use is in accordance with the applicable rules, NIH policy, and gift conditions (if any). NIH is authorized to accept, not to solicit, gifts that are conditional or unconditional. If conditional gift funds are used to support an NIH Challenge monetary prize, their use must be consistent with the conditions of the gift.

ICs may also accept donations from private sector entities and other government agencies with authority to contribute funds for monetary prizes. Such donations are considered and treated as gifts for purposes of NIH Challenges and must be paid to the IC conducting the NIH Challenge and deposited in an appropriate gift fund prior to announcing the NIH Challenge. In addition, under the America COMPETES Act, agencies are prohibited from giving any special consideration to any private sector entity in return for a donation. If the funding for the monetary prize is donated, in whole or in part, by a non-federal entity, the *Federal Register* should not indicate the name of the donor.

NIH policies on gifts are set forth in the [NIH Manual Chapter on Gifts](#), with limitations on accepting certain gifts. Limitations that may be especially pertinent in an NIH Challenge include the limitation that gifts may not be accepted if conditions imposed by the donor are illegal, contrary to public policy, burdensome, unreasonable to administer, contrary to generally-accepted public standards, or would create a conflict of interest or an appearance of a conflict of interest to a reasonable person, which cannot be resolved satisfactorily by an ethics official. In addition, gifts may not be accepted if they are

¹ The NIH may engage a contractor to award the prize purse. If funds for the payment of the awards are included in a contract, the *Federal Register* notice for the competition may be printed in a different fiscal year than the fiscal year that the contract was awarded.

tendered for the purpose of securing an endorsement or with the expectation of receiving a future benefit from NIH.

3. Contracts

Utilizing procurement authority, ICs may conduct a procurement in a Challenge-like manner when the payment of a prize is for a good or service for the benefit of the federal government. Where appropriate, an IC could use existing procurement authority to issue a solicitation seeking offers that satisfy certain technical criteria for which the agency would pay a fixed amount (the prize).

In situations where small prizes or small procurements are considered (in particular, below \$100,000), agencies may also be able to leverage the flexibilities afforded by simplified acquisition procedures to allow for innovative, Challenge-based approaches to such procurements. ICs should work with their Challenge Manager and procurement officials to structure NIH Challenges that are compliant with all applicable laws, regulations, and policy, particularly the Federal Acquisition Regulations and HHS Acquisition Regulations.

4. Public-Private Partnerships and Co-Sponsorship Agreements

ICs have authority to partner with outside, non-federal entities such as foundations and nonprofit organizations to award monetary prizes or other forms of recognition to the winners of NIH Challenges. An award from the private sector that supplements NIH funds can further incentivize participation in an NIH Challenge. An IC considering such partnerships should consult with the Office of the General Counsel (OGC) as needed to consider, among other issues, the need to comply with gift acceptance authorities and appropriations laws. The policies set forth in the [NIH Manual Chapter on Public-Private Partnerships](#) also apply.

ICs may enter into co-sponsorship agreements with non-federal entities to conduct NIH Challenges. ICs considering such arrangements must consider issues relating to prohibition of solicitation, endorsement, and gift acceptance authorities, among others. The NIH Ethics Office provides a [model co-sponsorship agreement](#) along with extensive [co-sponsorship guidance](#).

5. Interagency and Intra-agency Agreements

In keeping with their own appropriations, statutory authorities, and duties when sponsoring an NIH Challenge, ICs may partner with each other and/or with other federal agencies to sponsor a Challenge that promotes a shared purpose or joint goal. Challenge Managers should, however, confirm that the other federal agencies have elected to implement the America COMPETES Act before entering into an interagency agreement for Challenges. ICs are also encouraged to review the policies set forth in the [NIH Manual on Interagency Agreements](#).

B. Unavailable Expenditure Mechanisms

1. Grant or Cooperative Agreement

A grant or cooperative agreement may not be used as a prize because a prize is awarded for the first or best solution to a problem (i.e., a good or service). Grants and cooperative agreements support applicants working toward an outcome; not the outcome itself. Furthermore, because neither grants nor

cooperative agreements may be used to acquire goods and services for the direct use or benefit of the Federal Government, they are not considered acceptable expenditure mechanisms for Challenges.

2. Other Transactions Authority

Other expenditure mechanisms (e.g., Other Transactions Authority) are not addressed in this Policy. They may be considered once additional guidance becomes available.

VII. KEY ROLES AND RESPONSIBILITIES

IC Challenge Manager

Each IC interested in holding NIH Challenges must designate a Challenge Manager who will be appointed by the IC's Director. Among other things, Challenge Managers are responsible for administering, managing, coordinating, planning, implementing, and recommending that NIH fund an NIH Challenge. They develop and draft the rationale and rules of participation, assist in determining the appropriate expenditure mechanism, and manage the judging and winner selection process. In addition, they ensure that prize amounts and the timing of prize distribution are clearly defined, work to engage the public in the NIH Challenge as appropriate, and ensure that the requisite reports are completed.

Moreover, Challenge Managers ensure that there is sufficient time allowed to conduct an NIH Challenge (See section VIII, Amount of the Monetary Prize; Award-approving Official and section IX, Challenge Clearance and Approval for more details) and that the IC has obtained the necessary approvals prior to announcing an NIH Challenge. They also arrange to publish approved NIH Challenges in the *Federal Register* and on applicable announcement web sites, such as Challenge.gov. Challenge Managers serve as the point of contact between the NIH Office of the Director and their IC. They work directly with Program Officials, Executive Officers, [Privacy Act officials](#), OMB Project Clearance Liaisons, the NIH Office of the Director, and others to ensure that NIH Challenges comply with applicable requirements.

IC Directors

IC Directors have authority to provide Challenge Approval for NIH Challenges with a monetary prize of up to \$50,000 and also to provide Challenge Clearance for NIH Challenges with a monetary prize above \$50,000. In addition, IC Directors appoint their IC's Challenge Managers and typically serve as the IC's Award-approving Official.

IC Executive Officer and IC Budget Officer

The IC Executive Officer and the IC Budget Officer are responsible for ensuring that NIH Challenge prize monies are available and obligated. Additionally, they confirm that disbursements comply with the IC's statutory authority. Moreover, review by the IC's Executive Officer and Budget Officer may help to ensure that the NIH Challenge will not result in an Anti-deficiency Act violation.

IC Program Officials/Intramural Staff

IC Program Officials and Intramural staff may serve as NIH Challenge subject matter experts. In addition to developing NIH Challenges, they help identify judges and develop the Challenge Solicitation.

NIH Office of the General Counsel (OGC)

OGC provides advice on an IC's authority, appropriations law, and other legal considerations with respect to the America COMPETES Act. ICs are encouraged to engage OGC early in the NIH Challenge development process.

NIH Office of Management Assessment (OMA)

OMA oversees NIH's *Federal Register* process. OMA works directly with the Challenge Manager to prepare the *Federal Register* notice and to ensure all agency approving officials have reviewed the NIH Challenge prior to its announcement.

NIH Office of the Director, Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI)

DPCPSI staff work with Challenge Managers to provide policy advice on and clearance of the *Federal Register* notice announcing the Challenge Solicitation if the challenge exceeds \$50,000. ICs are encouraged to contact DPCPSI with any policy and other sensitive issues anticipated by or encountered during the development of an NIH Challenge.

VIII. CHALLENGE DEVELOPMENT PROCESS

ICs should plan appropriately for all stages of NIH Challenge development and administration. The design of an NIH Challenge and the prize award process may receive the bulk of the attention. ICs should devote sufficient time to defining the broader goals of the NIH Challenge and analyzing the motivations of Participants before they consider the prize type or value. ICs should also plan for the post-prize phase, including reporting and other follow-up activities. As applicable, the Challenge Manager may invite other ICs, agencies, and, in accordance with federal rules and regulations, outside scientists to participate in developing the NIH Challenge.

Challenge Managers are strongly encouraged to consult with appropriate agency officials as necessary, such as ethics, budget, contracts, communications, Privacy Act officials, committee management officials who oversee compliance with the Federal Advisory Committee Act (FACA), [Freedom of Information Act](#) (FOIA) experts, OMA, and the NIH Office of Management and Budget (OMB) [Project Clearance Liaisons](#).

Selecting the Expenditure Mechanism

Challenge Managers and their Budget Officers should work together and consider many factors when choosing an expenditure mechanism for an NIH Challenge. Each expenditure mechanism is governed by specific procurement and other laws, rules, regulations and policies. Together, these affect how an NIH Challenge may be structured, judged, funded, and administered. For example, an NIH Challenge designed to award a contract must comply with both the requirements and policies under the America COMPETES Act and HHS and applicable contract procurement laws.

In directly administering an NIH Challenge and funding the monetary prize, ICs must comply with all applicable appropriations laws, regulations, and policies, including, without limitation:

1. The Anti-deficiency Act – ICs may not spend, or commit themselves to spend, in advance of or in

- excess of appropriations, consistent with 31 U.S.C. § 1341;
2. The *bona fide* needs rule – appropriations made for a definite period of time may be used only for expenses properly incurred during that time, consistent with 31 U.S.C. § 1502(a);
 3. The purpose statute – appropriations may only be used for their intended purposes, consistent with 31 U.S.C. § 1301(a); and
 4. Other rules that require that the expenditure not be prohibited.

Announcing and Advertising an NIH Challenge

NIH Challenges, like all Challenges under the America COMPETES Act, must be announced by a *Federal Register* notice and then advertised widely to encourage broad participation. The Notice announcing the requirements and registration of the NIH Challenge must be published in the *Federal Register* either before or concurrent with its advertisement elsewhere (e.g., the NIH Guide or FedBizOpps). The *Federal Register* notice is the vehicle for the Challenge Solicitation.

The website, <http://challenge.gov>, must be used to advertise Challenges (including NIH Challenges) under the America COMPETES Act. HHS has provided guidance for the use of challenge.gov including [Governing Principles for the Use of Challenge.gov](#). In addition, NIH has provided the *Federal Register* Requirements for NIH Challenges with a sample template.

The General Services Administration provides an ordering schedule ([Advertising & Integrated Marketing Solutions \(AIMS\) 541 4G](#)) and HHS has awarded contracts to additional vendors to support Challenges (<http://www.hhs.gov/idealab/wp-content/uploads/2014/09/HHS-PRIZE-Competition-BPA-Ordering-Guide-November-20141.pdf>). However, ICs are not limited to these companies. ICs are also encouraged to utilize additional ways of advertising NIH Challenges, namely other websites, social media sites, public meetings, and conferences. ICs must also comply with the public announcement requirements of each expenditure mechanism.

Elements of a Challenge

The Challenge Solicitation/*Federal Register* notice must include, at a minimum, the following information (which is further described within the *Federal Register Requirements for NIH Challenges* including a sample template):

1. The subject of the NIH Challenge, which IC is hosting it and how it advances the IC's mission;
2. The rules for being eligible to participate in the NIH Challenge;
3. The process to register for the NIH Challenge;
4. The process to enter a Challenge Submission for the NIH Challenge;
5. The amount of the monetary prize;
6. The basis on which the winner(s) will be selected;
7. The Award-approving Official and how the monetary prize will be paid, including tax and withholding information; and
8. Additional information required by HHS and NIH policies, as described in the *Federal Register Requirements for NIH Challenges*.

The Subject of the NIH Challenge and how it Advances the IC's Mission

An NIH Challenge must directly implement the IC's statutory authority, which can be found in [Subchapter III, Part C of Chapter 6A of the Public Health Service Act](#). The Public Health Service Act and other governing statutes, their implementing regulations, and annual appropriations acts define an IC's purpose and permissible activities and govern how appropriated money may be expended. The IC's Executive Officer can be a resource for ensuring that the NIH Challenge implements that IC's statutory authority. Each NIH Challenge must promote a clear goal that is consistent with the sponsoring IC's mission.

The Rules to Participate in an NIH Challenge

NIH Challenges may award prizes to one or more eligible winners who agree in advance to follow the rules of the NIH Challenge. Many of the rules to participate in a Challenge are outlined in statute but have been expanded or amended through Departmental and/or NIH policy.

It is important to note that individuals or entities are permitted to consult with federal employees or use federal facilities during a competition under COMPETES. Doing so does not render the individual or entities ineligible to participate as long as the federal facilities and employees are equitably made available to all competitors. It is important to note that federal entities are not eligible to compete in Challenges. In addition, NIH employees are not allowed to compete in NIH-sponsored Challenges, but they are eligible to participate in competitions sponsored by HHS Staff Divisions (STAFFDIV) or other HHS Operating Divisions (OPDIVs) (e.g., Centers for Disease Control and Prevention, Substance Abuse and Mental Health Services Administration). They may not, however, work on their applications or submissions within the scope of their employment or during duty hours, and may not use federal facilities unless the facilities have been made equitably available to all competitors. NIH employees seeking to participate in a Challenge outside the scope of their employment should consult their ethics official prior to developing their submission and also obtain the approval of their supervisor.

Below is a short introduction to the *Federal Register Requirements for NIH Challenges* including the sample template for NIH Challenges and a discussion of specific policy points Challenge Managers may want to review.

The *Federal Register Requirements for NIH Challenges*. The sample template outlines the information and specific language that must be included in *Federal Register* notices announcing NIH Challenges as well as optional text for inclusion on a case-by-case basis. Refer to this template for the specific text.

IC's Statutory Authority. The NIH Challenge Policy requires the sponsoring IC to address how the NIH Challenge is consistent with and promotes the IC's statutory authority, and how the goals of the NIH Challenge are consistent with the IC's mission.

Participation of Non-U.S. Citizens and/or Non-Permanent Residents. The America COMPETES Act expressly states that: "To be eligible to win a prize... in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States." In effect, non-U.S. citizens and non-permanent U.S. residents are not eligible to win a prize (in whole or in part) under the America COMPETES Act. As a matter of policy, however, NIH generally permits non-U.S. citizens and non-permanent U.S. residents to register for and participate in NIH Challenges. Such individuals may, for example, participate as part of a team that satisfies the applicable eligibility criteria and may be recognized when the results are announced, but they are not permitted to receive any monetary prizes.

The Process to Register for an NIH Challenge and Enter a Submission

In order to participate in an NIH Challenge, registration is required and there is flexibility in how registration may happen, such as through a URL on an IC's web page or through Challenge.gov for software application and ideation challenges. Irrespective of the registration process, all NIH Challenges must be posted on the www.Challenge.gov website. The *Federal Register* notice should be clear and specific about the purpose of and distinction between the registration and entry submission processes so that Participants understand exactly how to obtain and provide all information related to the NIH Challenge.

The Amount of the Monetary Prize; Award-Approving Official

The America COMPETES Act authorizes federal agencies to award sizable prizes; NIH may offer up to a \$50 million prize without consulting with Congress. With respect to the prize value, the amount of the monetary prize should be commensurate with the impact and cost of pursuing the articulated goals of the NIH Challenge; however, the expenditure mechanism used to award a monetary prize may place restrictions on its value. NIH may increase the amount of a monetary prize after an initial *Federal Register* announcement is made provided that the HHS Secretary has approved the change in advance.

The timing of awarding a monetary prize largely depends on the goals of the NIH Challenge and use of the prize as a motivator in spurring innovation. Some NIH Challenges will plan to award a prize at the end of a competition. Other NIH Challenges may wish to provide interim prizes if certain milestones are met. This may provide motivation throughout a competition. Both approaches are acceptable but must be clearly articulated in the *Federal Register* notice.

The [HHS Competition Award Policy](#) requires that the name of the Award-approving Official be included in the *Federal Register* notice. Typically, the Award-approving Official for NIH Challenges is the IC Director or his/her designee.

The Basis on Which the Winner(s) will be Selected

The Challenge Solicitation must articulate the basis on which the winner or winners will be selected. It must include detailed information about the judging criteria and any specific requirements that must be satisfied for the IC to further promote the winning entry(ies). For example, in the case of a video development NIH Challenge, if an IC wishes to post the winning video on the IC's website, the Challenge Solicitation must request that all Participants agree to allow their video to be posted on a website. Note, that any videos or text posted on a federally-supported website must be accessible according to [Section 508 standards](#), comply with all laws where the video was filmed, and not violate third-party rights or copyright laws.

How the Prize is Paid; Tax and Withholdings

The *Federal Register* notice/Challenge Solicitation must also indicate that monetary prizes will be paid using electronic funds transfer, may be subject to federal income taxes, and that the NIH will comply with the Internal Revenue Service (IRS) withholding and reporting requirements, where applicable. The [HHS Competition Award Policy](#) offers additional guidance to finance officials responsible for preparing the obligating documents.

IX. CHALLENGE CLEARANCE AND APPROVAL

The process for obtaining Challenge Clearance and Challenge Approval for NIH Challenges depends on the amount of the monetary prize.

Total Aggregate Value of NIH's Monetary Prize	Challenge Review	Challenge Clearance	Challenge Approval	<i>Federal Register</i> notice Signatory
\$50,000 or less	IC	IC	IC Director	IC Director or Designee
\$50,001 – \$100,000	IC DPCPSI OGC OMA	IC	IC Director DPCPSI Director	IC Director or Designee
\$100,001 – \$500,000	IC DPCPSI OGC OMA	IC DPCPSI Director	NIH Director or NIH Principal Deputy Director	NIH Director or NIH Principal Deputy Director
\$500,001 or more	IC DPCPSI OGC OMA	IC DPCPSI Director NIH Director or NIH Principal Deputy Director	HHS Secretary	NIH Director or Principal Deputy Director

Monetary Prizes up to \$50,000

IC Directors have authority to approve NIH Challenges with monetary prizes of up to \$50,000. ICs are encouraged to develop their own policies and procedures for handling NIH Challenges as long as they are consistent with this Policy (including any subsequent revisions), and any relevant laws, regulations, and policies. DPCPSI does not need to be consulted for monetary prizes up to \$50,000. The IC Director (or designee) signs the *Federal Register* notice.

Monetary Prizes between \$50,001 and \$100,000

The DPCPSI Director provides Challenge Review, Clearance, and Approval for monetary prizes between \$50,001 and \$100,000. ICs should allow at least one week for the DPCPSI Challenge Review, two weeks for OGC Challenge Review, and one week for final DPCPSI Challenge Approval. Any necessary edits the IC must make to address the comments may require additional time. Furthermore, additional time may be needed to obtain clearance from OMB, the [Privacy Act Office](#), or other Offices as needed. ICs should ensure that their projected timeline incorporates sufficient time for Review, Clearance, and Approval by the necessary entities. The process may be broken out into two parts – the duties of the Challenge Manager and the duties of DPCPSI and OD offices – as outlined below:

A. The Challenge Manager

1. Works with IC staff to draft the NIH Challenge goals, rules, and other elements of the NIH Challenge and completes responsibilities consistent with the [NIH Challenge Checklist](#).

2. Drafts the *Federal Register* notice (Challenge Solicitation) in accordance with the NIH *Federal Register Requirements for NIH Challenges*. Preparations should also be made at this time to ensure that any webpages or email addresses related to the NIH Challenge will be ready and “live” when the *Federal Register* notice is published.
3. Prepares and sends a decision memorandum (email is sufficient) to the DPCPSI Director from the IC Director describing the NIH Challenge. Among other things, the decision memo should describe:
 - a. How the IC sought broad input within and outside of the Government on the topic;
 - b. The recommended [liability insurance](#) amount, even if zero, and a brief justification;
 - c. The list of clearances to be obtained and their status;
 - d. A recommended panel of judges if known or the criteria that will be used to choose the judges; and
 - e. Confirmation that the IC’s Executive Officer and/or IC Budget Office reviewed the NIH Challenge for compliance with the three parts of the Anti-deficiency Act
 - i. Time: funds must be obligated in the time period during which they are available for obligation. They may not be obligated in advance of the IC’s appropriation.
 - ii. Amount: obligated funds must be less than or equal to the IC’s appropriation.
 - iii. Purpose: the goal of the Challenge must be consistent with the purpose of the appropriated funds (e.g. to advance the IC’s mission).

DPCPSI Challenge Review – One Week

4. DPCPSI staff review the draft *Federal Register* notice and decision memorandum and provide feedback to the Challenge Manager.
5. After the Challenge Manager reviews and incorporates necessary edits, the Challenge Manager returns the draft *Federal Register* notice to DPCPSI for final consideration before legal review.

OGC Legal Challenge Review – Two Weeks

6. After DPCPSI concurs with the content, the Challenge Manager sends the document to OGC for legal Challenge Review.
7. OGC sends their comments to the Challenge Manager within two weeks. The Challenge Manager may then discuss the comments with OGC and then incorporate them into the *Federal Register* notice as appropriate. This is a collaborative, iterative process.

DPCPSI Final Approval – One Week

8. The Challenge Manager sends the revised draft *Federal Register* notice to DPCPSI for final consideration by the DPCPSI Director. The DPCPSI Director may request additional edits or provide Challenge Approval that authorizes the NIH Challenge for publication in the *Federal Register*.

B. NIH Federal Register Liaison

9. When all Challenge Approvals have been obtained, the Challenge Manager sends the *Federal Register* notice to the NIH Federal Register Liaison in OMA for formatting review in accordance with *Federal Register* guidelines.
10. OMA sends their comments to the Challenge Manager. The Challenge Manager may then discuss the comments with OMA and then incorporate them into the *Federal Register* notice as appropriate. Once final, the Challenge Manager prepares the package for the IC Director to sign and sends the signed notice package to the NIH Federal Register Liaison, after confirming with the Liaison the items that need to be included with the signed notice.
11. The NIH Federal Register Liaison certifies and submits the notice to the *Federal Register* for publication.

Monetary Prizes of \$100,001 and up to \$500,000

For monetary prizes of \$100,001 and up to \$500,000 in total prizes, irrespective of whether one prize or several, the approval process is as follows:

1. Follow all steps above for “Monetary Prizes between \$50,001 and \$100,000”, except prepare the decision memorandum for the NIH Director or Principal Deputy Director through the DPCPSI Director.
2. The NIH Federal Register Liaison sends the notice to the NIH Executive Secretariat via the Division of Management Support Director, OMA Director, and NIH Deputy Director for Management and notes that all of the Challenge Clearances that have been obtained for the NIH Challenge.
3. The NIH Executive Secretariat forwards the *Federal Register* notice to the NIH Director or Principal Deputy Director for Challenge Approval and signature.
4. The NIH Executive Secretariat returns the signed *Federal Register* notice to the Federal Register Liaison.
5. The NIH Federal Register Liaison sends the signed NIH Challenge *Federal Register* notice to the Office of the Federal Register (OFR) by courier for publication and requests notification of the scheduled publication date. In general, the OFR publishes notices in the *Federal Register* 4-5 business days after the OFR receives the notice. As soon as the NIH Challenge *Federal Register* notice is published, the Challenge Manager is required to post the NIH Challenge on <http://challenge.gov>. The Challenge Manager may also advertise the NIH Challenge broadly.

Monetary Prizes Exceeding \$500,000

For monetary prizes exceeding \$500,000, irrespective of whether one award or several, the clearance and approval process is as follows:

1. Follow steps above for “Monetary Prizes of \$100,001 and up to \$500,000”, except prepare the *Federal Register* notice and decision memorandum for submission to the HHS Secretary through

the NIH Office of the Director. The required elements are detailed in [HHS guidance for Secretarial approval](#) pursuant to the [HHS Delegation of Authority](#).

2. The NIH Director or Principal Deputy Director signs the *Federal Register* notice and is listed as the Award-approving Official for the NIH Challenge.
3. The HHS Secretary requests 21 days for review. This is in addition to the timeframe necessary for the NIH Challenge Review and Clearance. After the HHS Secretary approves the NIH Challenge, the IC may announce it in the *Federal Register*.

NIH Challenges where the monetary prize amount is increased after initial Challenge Solicitation

The HHS Secretary must approve any increase in the amount of a monetary prize after the initial Challenge Solicitation has been made. Please contact [DPCPSI](#) for additional guidance.

X. JUDGING

Each Challenge Solicitation must include a predetermined process for judging the Participant's performance based on their success in advancing a stated mission of an IC or NIH. The process for selecting the winner(s) must be logical. NIH Challenges may not be structured to randomly decide winners (such as a lottery or drawing); there must be no element of chance in selecting a winner.

There are numerous ways to evaluate Challenge Submissions. When many Challenge Submissions have been received, some ICs have implemented a tiered review process. Using this approach, Challenge Submissions are reviewed administratively, programmatically, and technically. Together, these panels provide input to a team of judges.

By the nature of their work in assessing the performance of Participants, judges hold an important and impartial role in recommending whether and to whom NIH could award a monetary prize. HHS has developed [HHS Competition Judging Guidelines \(http://www.hhs.gov/idealab/wp-content/uploads/2014/04/HHS-COMPETITION-JUDGING-GUIDELINES.pdf\)](http://www.hhs.gov/idealab/wp-content/uploads/2014/04/HHS-COMPETITION-JUDGING-GUIDELINES.pdf). This Policy includes specific roles and responsibilities for the Challenge Manager.

Before deciding on a process for judging and judges, note that the expenditure mechanism used may impose additional requirements on the judging process. For example, an NIH Challenge designed to award a contract as the prize may need to satisfy procurement rules that dictate the extent to which Contracting Officer's Technical Representatives must participate in the judging. As such, the appropriate procurement officials should be consulted.

The IC Director has been delegated authority to appoint judges. A variety of resources exist to help ICs identify qualified judges. For example, ICs may wish to use some of their Council members as judges, if consistent with the criteria and processes referenced in the HHS Competition Judging Guidelines. Council members have completed their Conflict of Interest documentation and are familiar with the mission of the IC. In addition, study section rosters on [Center for Scientific Review's website](#) may provide another resource for Challenge Managers. Other helpful NIH resources may include QVR, eSPA, and PubMed. Judging panels should also include IC program staff because they are knowledgeable of the IC's mission, priorities, and the relevant state of the science. To help ensure that the judging process

is advisory to the Award-approving Official and ensure the integrity of the process, NIH advises that judging panels exclude the Award-approving Official unless the Award-approving Official participates in an *ex-officio* role.

Although HHS guidelines allow Challenges to be judged by a single person, it is advisable to use several judges unless Challenge Submissions can be quantified in a non-disputable fashion. DPCPSI further recommends using an odd number of judges to avoid a tie. Consistent with NIH's traditional use of Advisory Councils and Boards to review and recommend the most meritorious science for funding, recommendations from NIH Challenge judges are non-binding. Responsibility for deciding on the funding of prizes rests solely with authorized NIH officials, such as the Award-approving Official.

In accordance with HHS Challenge Guidelines, all individuals serving as judges under the *America COMPETES Act*, regardless of employment status, are subject to specific ethics requirements set forth in the *America COMPETES Act*. The *Act* specifically requires that judges must not:

1. Have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or
2. Have a familial or financial relationship with an individual who is a registered participant.

Additional ethics requirements will apply to judges serving on prize competitions authorized by the *America COMPETES Act*, depending on the way their services are secured by the government and what activities they perform for HHS.

Special Government Employees - Non-Federal individuals retained by the government as judges under the *America COMPETES Act* will be Special Government Employees (SGEs) and subject to the ethics rules pertaining to that category of employee, including:

1. The obligation to file a Confidential Financial Disclosure Report (OGE Form 450); and
2. The restrictions imposed on SGEs by the criminal conflict of interest statutes (e.g., 18 U.S.C. § 208), and the Standards of Ethical Conduct, and applicable supplemental regulations.

In addition, these judges will be subject to the restrictions imposed by the *America COMPETES Act* as described above.

Federal Employees from Outside HHS - Federal employees from outside HHS that are acting within the scope of their official duties when serving as a judge on HHS *America COMPETES Act* competitions, remain subject to the ethics rules as they apply to federal employees and may also be subject to any supplemental ethics regulations applicable to their agency. In addition, Federal employees serving as judges will also be subject to the additional restrictions required by the *America COMPETES Act*, described above.

Restrictions on Non-Judges - Individuals may participate in the process of evaluating prize competition entries without their participation rising to a level that would require them to be viewed as judges under the terms of the *America COMPETES Act*. For example, it may be possible to retain individuals to provide technical advice in relation to the judging process, but not to make the final selection decision. Such individuals would not make the selection decision in the judging process, and therefore would not

likely be considered SGEs. Similarly, as they would not be considered judges under the *America COMPETES Act*, they would not be subject to the restrictions in the *America COMPETES Act*.

XI. PAYING THE WINNERS

At the time an NIH Challenge is announced in the *Federal Register*, the sponsoring IC obligates the funds, and should have already recorded the funds covering the total monetary prize in the appropriate accounting system (e.g., the NIH Business System or NBS).

Awarding a monetary prize to the winning Participant(s) must be made by an authorized agency official, which depends on the expenditure mechanism described in the announcement. For prizes with established procedures (e.g., a contract), Challenge Managers should consult their procurement officials and/or IC Executive Officer on the proper procedures to follow to award a prize consistent with section VI. 3. Contracts. When a non-contract monetary prize is to be awarded by the NIH, authorized agency officials are to follow the financial management guidance issued in the [HHS Competition Award Policy](#) and the [HHS Competition Award Obligor Document](#).

Once the obligation is recorded, payment of the monetary prize can be made in future fiscal years. The expiration period depends on the source of funds. No year funds are available indefinitely while typical appropriated funds are available for five years from the date of obligation. In effect, NIH Challenges that use appropriated funds will generally have five years from the date of obligation to award a monetary prize. Therefore, the timing of the NIH Challenge and payment of a monetary prize must be structured so funds are disbursed to the winning Participant before the funds expire.

Awarding a Monetary Prize

Prior to disbursing a monetary prize, the sponsoring IC must check the [Excluded Parties List System](#) to see if any prospective awardee has been suspended or debarred. If a prospective awardee appears on the list, please check with the HHS Office of the General Counsel or the Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability before proceeding. Additional steps to award a monetary prize to a winning Participant(s) are outlined in the NIH Challenge Checklist.

XII. PRE- AND POST-PRIZE REPORTING; RECORD RETENTION

A Challenge Manager has several reporting and recordkeeping responsibilities. These include:

Post-Challenge Survey. The Challenge Manager must complete the [HHS post-Challenge Survey](#) within 10 days after the announcement of the awardees.

Impact Survey. The HHS Competes Manager will collect an impact survey approximately one year after the award.

Record Retention and Disposal. All records (e-mail and non-e-mail) pertaining to this Policy must be retained and disposed of under the authority of [NIH Manual 1743](#), "Keeping and Destroying Records". NIH e-mail messages (messages, including attachments that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational values are considered federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information. Also see the [HHS Competition Judging Guidelines](#) (e.g., it describes what are considered personal notes).

All such e-mail messages are considered property of the Federal Government and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of e-mail messages. E-mail messages must also be provided to Congressional oversight committees, if requested, and are subject to FOIA requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same request as the original messages.