



**NEBB**

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## **NEBB ANTITRUST COMPLIANCE POLICY**

*Approved by the NEBB Board of Directors July 24, 2015*

The National Environmental Balancing Bureau, Inc. (“NEBB”) is a non-profit organization committed to its mission of serving as the premier international certification association for professionals and firms that deliver high performance building systems and promoting the business purposes and objectives of its certificants. NEBB has a strict policy of compliance with federal and state antitrust laws. The antitrust laws prohibit agreements among competitors that restrain trade, and NEBB certified professionals and certified firms can be considered to be competitors for purposes of antitrust challenges even if their businesses are not in the same geographic areas or in the same service lines. The penalties for violations of the antitrust laws are severe for associations and their certificants.

In all NEBB activities, each certified professional and certified firm, as well as NEBB staff, shall be responsible for following the NEBB’s policy of strict compliance with the antitrust laws. NEBB officers, directors, committee chairs, and executive staff shall ensure that this policy is known and adhered to in the course of activities pursued under their leadership. Antitrust compliance is the responsibility of every NEBB certified professional and certified firm and NEBB staff.

### **General Antitrust Compliance Principles**

NEBB will not become involved in the competitive business decisions of its individual certified professionals and certified firms, nor will it take any action that would tend to restrain competition. NEBB is firmly committed to the principle of competition served by the antitrust laws, and good business judgment demands that every effort be made to assure compliance with all applicable federal and state antitrust laws and trade regulations.

NEBB certified professionals and certified firms cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower, or stabilize prices, allocate or divide up markets, or encourage or facilitate boycotts. Individual NEBB certified professionals and certified firms must make business decisions on their own and without consultation with their competitors or NEBB.

The antitrust laws are complicated and often unclear. If any certified professional or certified firm is concerned about being in a “gray area,” the certified professional or certified firm should consult with NEBB. If the conversation among competitors at a NEBB meeting turns to antitrust-sensitive issues, participants should discontinue the conversation until legal advice is obtained or leave the meeting immediately.

Discussions of pricing or boycotts as part of NEBB-scheduled programs or at NEBB-sponsored meetings could implicate and involve NEBB in extensive and expensive antitrust challenges and litigation. In addition, the U.S. Supreme Court has determined that an association can be held liable for statements



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or actions in antitrust-sensitive areas by volunteer leaders who claim to speak for the association, even if they are not authorized to speak in that area. Directors and officers of NEBB must, therefore, make clear whether they are speaking in their official capacity when they address such issues; by contrast, if they are making personal remarks outside of a NEBB setting, the speaker should clearly state that he or she is speaking for him or herself, and not on behalf of NEBB.

To assist NEBB staff, officers, directors, and committee chairs in recognizing situations that may give the appearance of an antitrust concern, the Board of Directors shall provide to each such person, copies of NEBB's Antitrust Compliance Policy. In addition, NEBB's antitrust statement shall be referenced at the start of each meeting where NEBB business will be discussed, and this action will be noted in the minutes of the meeting.

Any violation of this antitrust policy will be brought to the attention of the Board of Directors, and the Board will deal with it in a timely and appropriate manner. The Board of Directors will consult with legal counsel when questions arise as to the manner in which the antitrust laws may apply to the activities of NEBB.

### **Specific Rules of Antitrust Compliance**

1. NEBB activities shall not be used for the purpose of bringing about, or attempting to bring about, encouraging, or facilitating any understanding or agreement, written or oral, formal or informal, expressed or implied, among competitors with regard to prices, terms or conditions of sale, discounts, territories or customers. Any agreement by competitors to fix prices or "honor," "protect," or "avoid invading" one another's geographic areas or product lines would violate the law.
2. NEBB activities and communications shall not include discussion or actions, for any purpose or in any fashion, of prices or pricing methods or other limitations on either the timing of services or the allocation of territories or markets or customers in any way. For example, NEBB certified professionals and certified firms cannot come to understandings, make agreements, or otherwise concur on positions or activities that are directed at fixing prices. Likewise, NEBB certified professionals and certified firms cannot make agreements as to whether they will or will not enter into contracts with certain manufacturers or customers. Nor can they discuss allocating geographic or product markets. Even if no formal agreements are reached on such matters, discussions of prices, group boycotts, or market allocations followed by parallel conduct in the marketplace can lead to antitrust scrutiny or challenges. Certified professionals and certified firms may, however, consult with each other and freely discuss general business trends; best practices in sales, marketing, or other legitimate business matters; changing market conditions; technological innovations; and the like.
3. NEBB shall not undertake any activity that involves exchange or collection and dissemination among competitors of any information regarding prices, pricing methods, cost of services or labor, or sales or distribution without first obtaining the advice of legal counsel, when questions



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arise as to the proper and lawful methods by which these activities may be pursued. For example, caution should be exercised in collecting data on workforce statistics and job market opportunities. While the mere collection of data on such matters is permissible, antitrust concerns may arise if the data become the basis for collective action.

In sum, NEBB activities and communications shall not include any discussion or action that may be construed as an attempt to: (1) raise, lower, or stabilize prices; (2) allocate markets, territories, or product lines; (3) prevent any person or business entity from gaining access to any market or to any customer for goods or services; (4) prevent or boycott any person or business entity, including specific manufacturers or customers, from obtaining products or services freely in the market; (5) foster unfair trade practices; (6) assist in monopolization or attempts to monopolize; or (7) in any way violate applicable federal or state antitrust laws and trade regulations. The actual purpose and intent of NEBB's policies and programs are important in this regard. They cannot be aimed at accomplishing anticompetitive objectives.

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