LLNL PHS FCOI INSTITUTIONAL POLICY

New Federal Conflict of Interest Regulations Impose New Disclosure and Training Obligations for Investigators Conducting PHS-sponsored Research (42 CFR Part 50 Subpart F)

Purpose of the New Regulations

The purpose of the new regulations is to promote objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under the Public Health Service (PHS) (and other covered agencies, as described below) will be free from bias resulting from Investigator financial conflicts of interest.

Covered Agencies and Sponsors:

The new rules took effect on August 24, 2012. They apply to **all** research sponsored by PHS, including the National Institutes of Health (NIH). The new rules also apply to a handful of non-federal sponsors, including the American Cancer Society and the American Heart Association. *Appendix I* contains a list of some of the agencies and sponsors who have adopted these new rules. Collectively, these agencies and sponsors are referred to herein as the "covered" agencies.

Scope of Disclosures:

The new Federal conflict of interest rule (FCOI) requires all Investigators to disclose to the Institution financial interests that reasonably appear to be related to the investigator's institutional responsibilities, including activities such as teaching, professional practice, Institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards. The term "Investigators" is defined to include: the Principal Investigator and any other person who has responsibility for the design, conduct, or reporting of research, including any person who is new to participating in the research project or for an existing Investigator who has a need to disclose a new SFI.

Monetary Thresholds for Reporting:

The new rule generally requires disclosure of the receipt of **more than $5,000** in remuneration from any source (with the exception of federal and state agencies, U.S. colleges and universities, and academic medical centers) that **reasonably appears to be related to the investigator's institutional responsibilities.** The disclosure must be made at the time of proposal submission. In addition, stock or equity ownership in a publically traded company that exceeds $5,000 (or any amount for a non-publically traded company) must be disclosed if such financial interest is related to the investigator's institutional responsibilities. Also, investigators must disclose any and all travel (with the exceptions indicated below) that is related to their institutional responsibilities and that is paid for or reimbursed by any entity regardless of the monetary amount involved. Financial interests that meet this definition and thresholds are deemed "significant financial interests" (SFI).

Who Must Disclose:

Anyone who qualifies as an "Investigator" is required to disclose. Each person is required to file their own separate disclosure form. The disclosure and reporting obligation also applies to Investigators who are working on a subaward. Disclosures must be completed even if there are no SFIs to report. An Investigator is responsible for disclosing all SFIs consistent with the scope and breadth of the new FCOI regulations in a timely manner.

A list of Roles and Responsibilities is presented in Appendix II.

When Disclosures Must Be Made:

Disclosures for each Investigator must be made:

1. At the time of submitting a request for funding from a covered agency;
2. Annually during the period of award; and
3. Within 30 days after acquiring or discovering an SFI that must be disclosed as defined by PHS. A new SFI can be acquired, for example, through purchase, marriage, or inheritance. A new SFI also includes a different type or nature of SFI than what had previously been disclosed from the same source that meets or exceeds the threshold (e.g., Investigator now receiving royalty payment in addition/or instead of consulting fees).

Definition of a Significant Financial Interest (SFI)

A *Significant Financial Interest* is defined as follows: a financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

- The value of any remuneration received from a publicly traded entity when in the 12 months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;
- Any remuneration received from a non-publicly traded entity when in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest); or
- Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

Investigators also must disclose the occurrence of any reimbursed or sponsored travel (i.e., that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available), related to their institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

The term *significant financial interest* does **not** include the following types of financial interests:

- Salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution, including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights;
- Any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization;
- Income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles;
- Income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education; or
- Income from service on advisory committees or review panels for a federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education.

How to Disclose

LLNL has adopted an electronic form, LL6494, which fulfills the FCOI disclosure of SFIs. This form is accessible at https://fcoi.llnl.gov. The disclosure must identify significant financial interests of the Investigator, spouses/registered domestic partners, and dependent children that exceed the thresholds set by PHS and that relate to any of the "Investigator's" institutional responsibilities.

Each Investigator named on a PHS-funded proposal must complete and submit a copy of the LL6494 to the Lead PI for a proposal, whether LLNL is the Lead or a subrecipient. It is important to note that a new LLNL form LL6494 must be completed for each new proposal opportunity. Once the document is completed, the investigator sends it and the training certificate (discussed below) to the Lead LLNL PI, who then compiles the forms from each individual. The Lead PI transmits these forms to the Ethics

Office (ethics-office@llnl.gov) at least two weeks prior to the request for funding. Each investigator should keep a copy of the LL6494 and the training certificate for his/her records.

Mandatory Training Requirement

All Investigators must complete the FCOI training:

- Prior to engaging in research related to any PHS funded research and at least every 4 years thereafter;
- When an Investigator is new to the Laboratory; or
- When an Investigator is not in compliance with the FCOI Policy or if the LLNS FCOI Policy is revised.

The training consists of reading LLNL's PHS FCOI Institutional Policy document and taking the NIH FCOI tutorial, which can be found at http://grants.nih.gov/archive/grants/policy/coi/tutorial/fcoi.htm . Upon completion of the tutorial, the Investigator prints a copy of the certificate, retains a record copy, and transmits a copy to the Lead PI for the proposal, which will then be compiled and sent to the Ethics Office at least two weeks prior to the proposal deadline. Copies of the certificate and the LL6494 form (as discussed above) are required whether LLNL is a lead or subrecipient.

Subrecipient

If the Institution carries out PHS-funded research through a subrecipient, then the awardee Institution must take reasonable steps to ensure that any subrecipient Investigator complies with the new FCOI regulations. At the time of proposal submission, if LLNS is the lead Institution, it should coordinate with all of the Investigators associated with the subrecipient by compiling the documentation described below. If LLNS is awarded the project and then needs to make an award to the subrecipient, then the PI will be responsible for notifying Supply Chain Management that the subcontract is subject to this Policy so that SCM can ensure that the appropriate contract clause is inserted into the subcontract when it is awarded.

Compiling of Documentation to Send to the LLNL Ethics Office

The LLNL PI will compile all the necessary documents from their research group as well as the documentation from their subawards if necessary. These documents include:

- Cover letter containing the proposal opportunity number, title, and hyperlink; notification that LLNL will be serving as either the Lead or subaward on submittingthe proposal; list of LLNL investigators and/or subaward personnel; and the scope of work or listed aims for the research proposal
- Copies of training certificates from all personnel named in the budget of the proposal

- Copies of LL6494 from all personnel named in the budget of the proposal
- If necessary, documentation from the subawards that they have their own FCOI policy or that they will abide by LLNL's policy

Click here to see an example of a cover letter template.

Once compiled, the PI will send the documentation to the Ethics Office (ethics-office@llnl.gov) no later than two weeks prior to the submitting of a request for funding.

Role of the Ethics Office

The Ethics Office is deemed to be the office of record which has Institutional responsibility for reviewing all disclosures and determining what, if any, mitigations are required. If the Disclosure identifies one or more SFIs, the LLNL Ethics Office is required to determine whether the disclosed financial interest is in fact a conflict. . Depending on the type and nature of the SFI(s), the Ethics Office will determine whether a management plan is warranted, and if so, it will develop, implement and then manage the plan, as needed to mitigate (if possible) the conflict. Once this is resolved (if it can be resolved), the Ethics Office reviews the package documents from the LLNL PI and provides an institutional memo of determination to the LLNL IBO Office with a copy to the LLNL PI so that the proposal can be submitted in a timely fashion. Upon receipt of an institutional memo, the LLNL PI will keep this for their records, and the IBO Office will be notified that all requirements have been met to comply with PHS regulations and that the proposal can be submitted. The Ethics Office shall be deemed to be the designated officials under the regulations.

Prior to the expenditure of any funds under a PHS-funded research project, or other times as the context may require, the Ethics Office, on behalf of the Institution shall be required to provide the PHS Awarding Component an FCOI report regarding any Investigator's SFOI which is found to be conflicting, along with any appropriate mitigation plans, as applicable.

In some cases, a SFI may not be disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Ethics Office. In such cases, the Ethics Office shall, within sixty (60) days review the SFI and determine whether or not it is related to PHS-funded research, and determine whether or not a FCOI exists, and if so, implement an appropriate management plan. If the Ethics Office otherwise determines that there has been non-compliance, the Ethics Office will initiate a retrospective review to determine if there has, in fact, been a time period of noncompliance, such that the research was biased in the design, conduct, or reporting of such research. Such retrospective review will be properly documented, update any previously submitted FCOIs, and if bias is found, the Institution shall be required to notify the PHS Awarding Component and submit a mitigation report.

Publicly Accessible Information

LLNL is required to make certain information publicly accessible upon request concerning any FCOI which is held by a senior/key personnel and the SFI is related to PHS-funded research. A senior/key personnel is someone who is the PI for the project, or otherwise identified as a senior/key personnel in the grant application, progress report, or other reports submitted to PHS. Requests should be submitted to the Ethics Office (ethics-office@llnl.gov) .

Deadlines

The deadlines established in this Policy are important. All of the interested stakeholders are interested in ensuring that proposals are submitted in a timely manner, and are not rejected because the FCOI process has not been completed in time to meet proposal submission deadlines. It is incumbent upon all participants to be keenly aware of the deadlines established in this Policy and to scrupulously follow them. If a deadline is missed for any reason it places additional burdens on the other stakeholders and may jeopardize the institutions' overall ability to submit a timely, compliant proposal submission. Rush or last minute reviews can and should be avoided by appropriate advance planning.

Record Retention Requirements

All records relating to Investigator disclosure of financial interests and the Institution's review of, and responses to, such disclosures and all other actions taken by the Institution must be kept and maintained for at least three (3) years from the date of final expenditure for the PHS funded project. All individuals involved are responsible for retaining the records consistent with this Policy.

Enforcement Mechanisms

All stakeholders are expected to comply with this Policy, or face appropriate sanction for non-compliance. If an Investigator fails to comply with this Policy, or if the mitigation plan is not followed, , and these failures appear to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall be required to notify the PHS Awarding Component of corrective action taken or to be taken (e.g. Corrective Action up to and including termination) . If Health & Human Services determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a FCOI that has not been effectively managed or reported by the Institution, the Institution shall be required to ensure that the cognizant Investigator discloses the FCOI in each public presentation of the results of the research and to request an addendum to previously published presentations.

Definitions

The following definitions are the terms of art established at 42 CFR § 50.603:

- A ***Financial Conflict of Interest*** *(FCOI)* exists when the Laboratory designated official reasonably determines that a Significant Financial Interest (defined below) could directly and significantly affect the design, conduct, or reporting of PHS-funded research.
- ***PHS*** means the Public Health Service of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the NIH.
- ***Institution*** refers to any domestic or foreign, public or private, entity or organization (excluding a Federal agency), including the Laboratory, that is the direct and primary recipient of NIH grant funds or that submits a proposal for a research contract whether in response to a solicitation from the NIH or otherwise, and is accountable to NIH for the performance of the project/contract, the appropriate expenditure of grant/contract funds by all parties, and all other obligations of the grantee/awardee, such as compliance with the terms and conditions of NIH grant/contract awards, including FCOI.
- ***Investigator*** refers to the Principal Investigator and any other person who is responsible for the design, conduct, or reporting of research funded by the NIH or proposed for such funding, including Investigators working for subrecipients/contractors/subcontractors/collaborators. The term Investigator includes the Investigator's spouse and dependent children.
- ***NIH*** is the National Institutes of Health, a Federal Agency whose mission is to improve the health of the people of the United States. NIH is a part of the Public Health Service, which is part of the U.S. Department of Health and Human Services.

APPENDIX I - Organizations That Require Compliance with PHS Regulations

U.S. Department of Health and Human Services/**U.S. Public Health Services Agencies** include:

- Agency for Healthcare Research and Quality (AHRQ)
- Agency for Toxic Substances and Disease Registry
- Centers for Disease Control (CDC)
- Centers for Medicare and Medicaid Services (CMS) [formerly HCFA]
- Food and Drug Administration (FDA)
- Health Resources and Services Administration (HRSA)
- Indian Health Services (IHS)
- National Institutes of Health (NIH)
- Office of Global Affairs
- Office of the Assistant Secretary for Health, including
    - Office of Minority Health Resources Center (OMH)
    - Office of Population Affairs (OPA)
    - Office of Research Integrity (ORI)
    - Office of Research on Women's Health (OWH)
- Office of the Assistant Secretary for Preparedness and Response, including
    - Biomedical Advanced Research and Development Authority (BARDA)
- Substance Abuse and Mental Health Services Administration (SAMHSA)

Non-PHS organizations which have adopted the PHS regulations:

- Alliance for Lupus Research
- American Cancer Society
- American Heart Association
- Arthritis Foundation
- California Institute for Regenerative Medicine (CIRM)
- Susan G. Komen for the Cure
- UC Discovery Grants
- UCOP Special Programs: University AIDS, California Breast Cancer, Tobacco Related Diseases

APPENDIX II - Roles and Responsibilities

(hyperlink to see document in spreadsheet form)