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July 1, 2009

Attention: Jerry Moore
NIH Regulations Officer
Office of Management Assessment
National Institutes of Health
6011 Executive Boulevard
Suite 601, MSC 7669
Rockville, MD 20852-7669

BY ELECTRONIC SUBMISSION VIA <http://www.regulations.gov>

Re: "Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding is Sought and Responsible Prospective Contractors; Request for Comments"

Dear Mr. Moore,

The American Physiological Society (APS) appreciates the opportunity to provide input on financial conflict of interest policies for extramural researchers funded by the National Institutes of Health in response to the May 8, 2009 Federal Register Notice, Docket No. NIH-2008-0002.

The APS is a professional society dedicated to fostering research and education as well as the dissemination of scientific knowledge concerning how the organs and systems of the body work. The Society was founded in 1887 and now has nearly 10,000 member physiologists. APS members conduct NIH-supported research at colleges, universities, medical schools, and other public and private research institutions across the U.S. As a scientific society, the APS represents individual investigators rather than research institutions and will therefore restrict our comments to matters directly involving extramural researchers.

The APS recognizes the need to conduct taxpayer funded research in accordance with the highest ethical standards in order to maintain the public trust and ensure research integrity. Relationships between academic researchers and their colleagues in industry are both beneficial and necessary for advancing basic research discoveries to applied technologies, including treatment and prevention strategies for disease. Relationships that involve financial interests should be disclosed in compliance with federal regulations, as well as the requirements of each institution. Investigators have an obligation to comply with all relevant rules, and conduct research objectively and transparently.

An open and transparent system of identifying and managing conflicts of interest will allow beneficial collaborations without jeopardizing scientific integrity. Any changes in the regulations governing conflict of interest should focus on disclosure of significant financial interests (SFI) and management of any resulting conflicts, rather than placing blanket restrictions on the types of relationships that investigators are allowed to maintain.

In light of these principles, the APS offers the following responses to the questions posed in the Federal Register Notice.

I. Expanding the Scope of the Regulation and Disclosure of Interests

Should the regulations be expanded so that they also apply to Phase I SBIR/STTR research applications/proposals for PHS funding?

APS Comments:

SBIR/STTR research applications should not be included in financial conflict of interest (FCOI) regulations for PHS funding. Small businesses applying for federal research dollars are inherently conflicted and to include SBIR/STTR under expanded regulations would constitute additional administrative burden for small businesses with limited resources.

Should investigators be required to disclose to their institutions all SFI that are related to their institutional responsibilities?

APS Comments:

Clear and consistent guidelines should be established requiring investigators to disclose all significant financial interests that are relevant to an investigator's institutional responsibilities and result from a specific, demonstrable relationship between an investigator and a third party (as defined in Section II below). The APS is concerned that increased regulations and reporting requirements will lead to excess administrative burden on investigators. New rules and regulations should seek to achieve a balance between transparency and the creation of unnecessary administrative burden.

Would expanded disclosure allow the institution to better determine which SFI constitute FCOI?

APS Comments:

Expanded disclosure will be helpful to institutions in terms of determining whether financial relationships constitute a conflict of interest. Reporting requirements should seek to balance the need for transparency with the investigator's right to financial privacy by only seeking information on financial interests that are relevant to an investigator's institutional responsibilities.

II. Definition of SFI

Currently SFI includes:

- *Salary and other payments for service (i.e. consulting fees or honoraria)*
- *Equity interest (stock, options, ownership interests)*
- *Intellectual property rights (patents, copyrights, royalties from such rights)*

Current exemptions are:

- *remuneration from the institution*
- *ownership interest in the institution if the institution is an applicant for SBIR*
- *income from seminars, lectures, teaching engagements sponsored by public or nonprofit entities*
- *income from service on advisory committees or review panels for public or nonprofit entities*
- *an equity interest that does not exceed \$10K or 5% ownership interest in a single entity*
- *salary, royalties or other payments that when aggregated for the investigator and investigator's spouse and dependent children over the next 12 months are not expected to exceed \$10K*

Should current exemptions be maintained? If so, are the current de minimis thresholds reasonable? If not, how should they be changed? And should the thresholds be the same for all types of research? If not, which exemptions should be reconsidered and why?

APS Comments:

The APS supports maintaining current exemptions and allowing institutions flexibility in determining de minimis thresholds for reporting of financial interests.

Additionally, in order to simplify reporting and reduce administrative burden, there should be a uniform set of rules that apply to all types of research conducted at a given institution. It is critical that any revised disclosure requirements establish clear and consistent guidelines to eliminate confusion on the part of the investigator as to what should and should not be reported.

Should certain SFI (i.e. SFI received from specific sources or related to certain types of research) automatically be considered a FCOI under the regulations? If so, what types of SFI?

APS Comments:

Financial interests do not automatically introduce bias and conflict of interest in a relationship. Significant financial interests should be disclosed to the institution so that appropriate steps can be taken to determine whether a conflict of interest exists, and how it should be managed, reduced or eliminated. This should be determined on a case by case basis at the institutional level rather than subject to blanket restrictions.

III. Identification and Management of Conflicts by Institution

Should large institutions (defined as greater than 50 employees) be required to establish an independent committee to review financial disclosures, and require that committee to report to an organizational level within the institution that is not conflicted by the short-term financial

interests of the investigator or institution? Would a 50 employee threshold reasonably balance the risk of a more relaxed requirement for smaller institutions against the burden imposed by requiring an independent panel for these evaluations?

APS Comments:

Current regulations place the responsibility on the institutions to monitor the financial interests of employees, make determinations about which relationships constitute conflict of interest and how to manage, reduce or eliminate any conflicts. Because institutions primarily bear that responsibility, determining the need for a review committee should be left to the institution.

For certain types of research, should the institution be required to develop a conflict management plan when the institution decides to manage or reduce, rather than eliminate, the conflict? If so, for which types of research? Should there be prescribed standards for the conflict management plans? Should the institution be required to submit this plan to the PHS funding component when it reports the existence of a conflict to the component?

APS Comments:

Institutions should be responsible for determining when conflict management plans are necessary, and how those plans should be designed. Because NIH functions primarily as a funding agency charged with evaluating scientific merit, rather than as a regulatory body, it is not necessary for institutions to regularly submit management plans when conflicts of interest are identified.

Should investigators who are involved in participant selection, the informed consent process, and clinical management of a trial, be prohibited from having a SFI in any company whose interests could be affected by their research or clinical trial? If so, what special circumstances would justify waiving this condition, if any?

APS Comments:

Institutions are responsible for identifying whether financial interests constitute a conflict of interest, and how conflicts should be managed, reduced or eliminated. The funding agency should not play a role in proscribing the activities of individual investigators.

Should the regulations prescribe specific approaches for the management, reduction, or elimination of particular types of FCOI? Which approaches?

APS Comments:

All decisions as to how conflicts of interest should be managed, reduced or eliminated should be made by institutions.

Should specific requirements related to the identification, management, and reporting of FCOI be established for subrecipients (i.e. subcontractors, subgrantees, contractors and collaborators)?

Should amounts received by investigators from certain kinds of organizations be limited to certain maximum thresholds if an investigator is supported with PHS research funds? At what thresholds?

APS Comments:

Each relationship between an investigator and a third party (as defined in Section II) involving significant financial interest should be subject to uniform rules of disclosure and examined on a case by case basis. Setting arbitrary maximum thresholds in the absence of a demonstrable conflict of interest will not necessarily protect research integrity.

IV. Assuring institutional compliance

Should the regulations enhance existing enforcement options in the event of noncompliance?

APS Comments:

Existing enforcement options are sufficient to ensure compliance. Existing regulations require the NIH to oversee institutional compliance with conflict of interest regulations, and NIH should not have its role expanded to become a regulatory agency.

Should investigators be required under the regulations to complete routine FCOI training?

APS Comments:

Institutions should design forms that are simple and instructions that are thorough and clear. Existing training requirements already constitute serious administrative burden for researchers. It is a mistake for new regulations to resort to training requirements and reporting mechanisms as a means to underscore their importance because the result is an increase in administrative burden to unmanageable levels.

Should independent confirmation of an institution's compliance with the regulation be required? If so, what should this confirmation look like (e.g. accreditation by an outside body, an independent audit)?

APS Comments:

Existing PHS regulations requiring institutions to provide information upon request constitute confirmation of compliance.

Should institutions be required to submit to the PHS funding component additional information on any identified conflict? If they should not be required to submit additional information for all

identified conflicts, should be required to submit additional information for identified conflicts involving certain types of research? What kind of information would provide valuable data to the PHS funding component in evaluating these reports and the potential risk of bias in conduct of research?

APS Comments:

As stated above, existing regulations require the NIH to oversee institutional compliance with conflict of interest regulations, and NIH should not have its role expanded to become a regulatory agency.

VI. Institutional conflicts of interest

How would the institutional conflict of interest be defined?

What would an institutional conflict of interest policy address in order to assure the PHS of objectivity in research?

APS Comments:

As a scientific society, the APS represents individual investigators rather than research institutions and will therefore restrict our comments to matters involving extramural researchers.