



1201 Maryland Avenue SW, Suite 900, Washington, DC 20024  
202-962-9200, [www.bio.org](http://www.bio.org)

July 7, 2009

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

**Re: Docket No. NIH-2008-0002 RIN 0925-AA53, Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors**

Dear Sir/Madam:

The Biotechnology Industry Organization (BIO) thanks the National Institutes of Health (NIH) for the opportunity to submit comments on the advanced notice of proposed rulemaking regarding conflict of interest in federally funded medical research, published in the Federal Register on May 8, 2009.

BIO represents more than 1,200 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products, thereby expanding the boundaries of science to benefit humanity by providing better healthcare, enhanced agriculture, and a cleaner and safer environment.

While observers have been arguing for many years that conflicts of interest in medical research hurt patient care and diminish research integrity, the issue has lately become particularly salient to policy makers, researchers, institutions, industry and other stakeholders, as collaborations among these groups and public-private partnerships have become more common. The result is an environment with increased suspicion about the relationships among industry, research institutions, and physicians, and greater regulation of these relationships.

However, close relationships between industry and researchers have had an enormously beneficial impact on both research and patient care. Financial relationships between academia

and industry help bring new products to the market for patients who need them. Industry-academic relationships also fuel economic development in states or regions and increase research budgets, supplementing funds obtained elsewhere.

As clinical trial sponsors, BIO member companies frequently collaborate with academic institutions and academically-based researchers. Therefore, conflict of interest policies at academic health centers, medical schools, and teaching hospitals could affect companies' ability to fund research, and ensure commercialization of this research to bring new biotechnology products to patients.

BIO believes that conflicts and potential conflicts of interest in research should be identified and appropriately managed. Conflict of interest guidelines and policies should emphasize disclosure of financial interests, rather than prohibition of certain relationships.

We understand that developing policy pertaining to conflicts of interest involves balancing several objectives: ensuring patients receive high quality care, supporting necessary industry-academic collaboration, and maintaining the integrity of medical research so as to inspire public confidence. We encourage NIH to recognize explicitly that these are mutually obtainable goals and all are necessary if our nation is to continue to lead the world in developing breakthrough products for patients.

**Financial relationships between academia and industry have had a beneficial impact on research and patient care.**

Some observers have argued that financial relationships between academia and industry inherently create a bias. They say that the presence of private money in the health care setting creates conflicts of interest for researchers that may affect research results and/or the quality of care provided to research participants.

As NIH considers the issues surrounding conflicts of interest, BIO urges recognition that the tremendous investment by the private sector over the past two decades has led to remarkable medical breakthroughs. Government policy to encourage private investment has been a major factor in the development of a biotechnology industry in the United States that is the envy of the world.

While biotechnology has created hundreds of new therapies and vaccines, including products to treat cancer, diabetes, HIV/AIDS and autoimmune disorders, and many rare conditions, there are still more than 600 biotech drug products and vaccines currently in clinical trials targeting more than 100 diseases. The vast majority of these projects involve collaborations with academic researchers.

The federal government recognized the potential benefits of such collaborations almost 30 years ago, with the enactment of the Bayh-Dole Act. The Act permitted universities and small businesses to own inventions made as a result of federal funding through patenting and authorized licensing to industry. The policy objective was to encourage the licensing of inventions developed in universities to industry, which would commercialize them into products

for patients. The Act has been enormously successful. The incentives it enabled have spurred research, led to the creation of new jobs, and facilitated the development of important public health products, including a Hepatitis B vaccine, human growth hormones, and synthetic penicillin.

Thus, while there is a risk that some close relationships between industry and academia may be abused by bad actors, we must also consider the great benefits of allowing industry funding for academic research. Among these benefits are added opportunities for the full and appropriate testing of biotechnology products. When addressing financial conflicts of interest, private and government policymakers must develop policies to achieve several goals: ensuring patients receive high quality care, maintaining research integrity, and promoting important and beneficial collaborations.

### **Independent Review and Financial Disclosure**

BIO believes the best way to protect the integrity of research while allowing important work to advance, is to ensure that research protocols are independently reviewed and that all financial interests are disclosed. Policies governing conflict of interest should require disclosure of financial relationships between and among researchers, investigators, sponsors, and Institutional Review Boards (IRBs). Researchers should also disclose these relationships to the institutional officer or committee appropriately designated by the institution. Policies should not prohibit nor otherwise impose rigid restrictions on the existence of such relationships.

Specifically, BIO has testified before the Institute of Medicine Committee on Conflict of Interest in Medical Research, Education and Practice (please see <http://bio.org/reg/20080313.pdf>) that:

- Investigators and sponsors of a clinical trial should be responsive and cooperative with institutions' efforts to identify financial or other interests that may create a conflict of interest, or the appearance of a conflict in reviewing research risks.
- Investigators should disclose to a reviewing IRB or other institutional oversight committee any financial or other interest in the research protocol that could have professional, personal, or material financial implications.
- Sponsors of a clinical trial should be forthright in responding to requests for information about financial or other interests of investigators that may create a conflict or appearance of a conflict in conducting research.
- Investigators should disclose to participants that they are compensated for conducting clinical trials. Payments to investigators and research institutions should not be contingent on the research outcome.
- Investigators and sponsors should support a reviewing IRB's determination that an interest of an investigator or research institution presents a conflict of interest, and its recommendation for dealing with the conflict, whether the interest is
  - disqualifying,
  - is one of the risks that should be disclosed to research participants during the informed consent process, or
  - is an interest that can be managed by the IRB through research process and oversight.

**Other, non-financial conflicts exist that could be harmful to patient care or research integrity and should be addressed.**

Many other conflicts and potential conflicts exist throughout the research system. Examples of non-financial conflicts researchers may confront include: the desire for faculty advancement and having good relations with peers and supervisors, competing successfully for research grants, receiving the prestige that comes from publications, and alleviating pain and suffering. Very little research has been published that analyzes the impact of these non-financial conflicts and few policies have been developed to help stakeholders identify and manage these conflicts.

NIH should include requirements for researchers to disclose non-financial conflicts. These can be disclosed using the same process as financial conflicts. The institution's conflict of interest committee – or the IRB if appropriate – should have the authority to manage the conflict or prohibit the researcher from participating in a particular project.

**NIH rules should be amended to include institutional conflict of interest policies.**

Institutional conflicts – including the conflicts of deans, trustees, and department chairs – should be included in NIH regulations. Just as institutional officers are responsible for reviewing and managing researcher conflicts, institutions should assign (and empower) officials with authority to review institutional and leadership conflicts. These conflicts have the potential to impact research and patient care and therefore should be identified and managed.

**More research is needed to determine whether financial or non-financial conflicts affect research quality or patient care.**

Most conflict of interest policies focus exclusively on financial conflicts and potential conflicts. Yet, there is insufficient empirical data about the impact of financial conflicts on research quality or patient care. In fact, recent studies demonstrate that many assumptions about financial conflicts of interest are not true (e.g., “Knowing Doctor’s Financial Interests Doesn’t Deter Clinical Trial Participants”, *Science Daily*, April 2, 2008). Some published analyses of university financial disclosure policies cast doubt on not only disclosure as a technique to manage conflicts but also on whether many financial relationships actually affect patient decisions regarding whether to participate in a research project (e.g., Weinfurt, KP, Dinan, MA, et al, “Policies of Academic Medical Centers for Disclosing Financial Conflicts of Interest to Potential Research Participants”, *Acad Med*. 2006 February; 81(2): 113–118).

Moreover, while agencies and institutions typically identify a conflict based on a financial relationship between the researcher and a commercial entity, there is little data to suggest that a specific dollar threshold would influence a researcher's behavior and if it did, what that amount would be. Perhaps reflecting this lack of consensus, the amount deemed to be a conflict varies by institution and by regulatory agency.

In addition, there is virtually no research data analyzing the influence of non-financial conflicts on patient care or research quality.

We suggest that the NIH sponsor research in these areas. Because the agency spends billions of dollars to support research and is developing a regulatory framework to govern the research – including management of conflicts of interest – it is essential for the agency to have sufficient data to make appropriate policy decisions.

**The NIH should adopt the US Food and Drug Administration (FDA) standard for financial interests to be disclosed.**

The Federal Register proposal asks for comments about the NIH definition of a "Significant Financial Interest." A "Significant Financial Interest" is currently defined by the current regulations as anything of monetary value, including but not limited to: salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include the following types of financial interests: salary, royalties, or other remuneration from the Institution; any ownership interests in the Institution, if the Institution is an applicant under the SBIR/STTR program; income from seminars, lectures, or 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, when aggregated for the Investigator and the Investigator's spouse and dependent children, does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; salary, royalties or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next twelve months, are not expected to exceed \$10,000.

BIO urges the NIH to adopt the FDA standard expressed in FDA's regulations. FDA rules apply to those potential conflicts that could affect the reliability of the data in a marketing application submitted to FDA. They focus on the bias that could arise from an investigator's financial interest in the outcome of a study because of the way payment is arranged, because the investigator has a proprietary interest in the product, or because the researcher has an equity interest in the company sponsor of the study.

The FDA regulations require sponsors to disclose financial arrangements with clinical investigators and certain interests of the clinical investigators in the product under study or in the sponsor. Sponsors must disclose investigator equity interests of \$50,000 or more or if they pay \$25,000 or more to the investigator or institution beyond the cost of the trial or other clinical studies. Harmonization of FDA and NIH requirements would allow investigators to follow one set of rules for disclosure of relevant financial information. This will reduce confusion and improve consistency, compliance, and efficiency.

**Conclusion**

BIO supports efforts to identify and manage conflicts of interest in research. BIO pledges to work with the NIH, other federal agencies, and other stakeholders to develop policies that improve patient care and protect research integrity. In our view, policy makers should develop

proposals that accomplish the mutually obtainable goals of protecting patient care and research integrity, while supporting beneficial industry-academic collaborations.

Thank you again for the opportunity to comment on these issues.

Respectfully submitted,

/s/

Sara Radcliffe  
Vice President, Science and Regulatory Affairs  
Biotechnology Industry Organization