# APPENDIX A

## Model Policy on Institutional Conflict of Interest in Human Subjects Research

*[Note: This model Institutional COI Policy represents one expression of the principles and practices recommended in Chapter 2 for addressing Institutional COI. It should not be seen as the recommended model policy but rather as one example of an Institutional COI policy.]*

### *1. Introduction*

An institutional conflict of interest (institutional COI) describes a situation in which the financial interests of an institution or an institutional official, acting within his or her authority on behalf of the institution, may affect or appear to affect the research, education, clinical care, business transactions, or other activities of the institution. Institutional COIs are of significant concern when financial interests create the potential for inappropriate influence over the institution's activities. The risks are particularly acute in the context of human subjects research, when the protection of human subjects and the integrity of the institution's research may be threatened. The policy is intended to protect against exposure from these risks as they may affect research performed at or under the auspices of the institution.

An institution, including its officials, must balance many competing pressures. It engages in relationships with a variety of sponsors that may lead to financial benefit for the institution in many forms, including major gifts, royalty payments and equity from licensing intellectual property as well as sponsored educational and research agreements. In addition, university-industry relationships are essential to advance scientific frontiers and enable the commercial development of academic discoveries to the benefit of the public. Nonetheless, while generally part of legitimate educational, research, and business activities, relationships with commercial entities cannot be allowed to compromise, or appear to compromise, the integrity of the institution's primary missions, including the safety and integrity of its research, education, and clinical care. The protection of human research subjects and integrity of the institution must remain of highest priority.

*[Comment: This preamble should define whether the institutional COI policy includes the entire university or solely the school of medicine. Consistent with the boundary of the Advisory Committee's charge, this policy is intended to cover the university as a whole but addresses only its human subjects research. The Committee recognizes that institutional COIs can arise in non-human subjects research, clinical care, and education, as well as in purchasing and other university business transactions and the Committee strongly recommends that institutions implement comprehensive institutional COI policies that embrace the full spectrum of the institution's activities.*

*In addition to policy provisions, as a general principle in addressing institutional COI, the administrative responsibilities for research, and especially human subjects research, should be separated to the maximum extent possible from the administrative responsibilities for investment management and technology licensing.]*

### *2. Definition of Institutional Conflict of Interest*

**An institution may have a conflict of interest ("institutional COI") in human subjects research whenever the financial interests of the institution, or of an institutional official acting within his or her authority on behalf of the institution, might affect—or reasonably appear to affect—institutional processes for the design, conduct, reporting, review, or oversight of human subjects research.**

### *3. Identification of Potential Institutional Conflicts of Interest*

The following significant financial and fiduciary interests of the institution warrant formal review of potential institutional COI with respect to human subjects research, as provided in this policy.

A. Royalties: institutional COI may be present when the institution has the potential to receive significant milestone payments and/or royalties from the sales of an investigational product that is the subject of the research;

B. Non-publicly traded equity: When, through its technology licensing activities or investments related to such activities, the institution has obtained an equity interest or an entitlement to equity of any value (including options or warrants) in a *non-publicly traded* company that is i) the sponsor of human subjects research at the institution, or ii) the manufacturer of a product to be studied or tested in human subjects research at or under the auspices of the institution;

C. Publicly traded equity: When, through technology licensing activities or investments related to such activities, the institution has obtained an ownership interest or an entitlement to equity (including options or warrants) exceeding $100,000 in value (when valued in reference to current public prices, or, where applicable, using accepted valuation methods), in a *publicly-traded* company that is i) the sponsor of human subjects research at the institution, or ii) the manufacturer of a product to be studied or tested in human subjects research at or under the auspices of the institution.

The following significant financial and fiduciary interests of covered officials warrant formal review of potential institutional COI with respect to human subjects research:

*[Comment: This section should identify the "covered officials," that is, those senior administrative officials to which the institutional COI policy applies, e.g., board members, the president/chancellor, provosts and vice provosts, vice presidents/vice chancellors, deans and vice/associate deans, department chairs, division chairs, institute and center directors, IRB chairs, the COI and institutional COI committee chairs, the chair of the institutional biosafety committee, and the chair of the stem cell review committee.]*

D. Institutional Officials: When, with regard to a specific research project to be conducted at or under the auspices of the institution, institutional officials with direct responsibility for human subjects research hold a significant financial interest in the commercial research sponsor or an entity that owns or controls the investigational product. "Significant financial interest" is defined for this purpose as being consistent with the institution's individual conflict of interest policy. In AAMC's 2002 guidelines for institutional COI, the definition includes the following:

1. An equity interest or entitlement to equity (including options or warrants) of any amount in a *non-publicly traded* company that is i) the sponsor of human subjects research at the institution, or ii) the manufacturer of a product to be studied or tested in human subjects research at or under the auspices of the institution;

2. An equity interest or entitlement to equity (including options or warrants) in excess of the *de minimis* amount (and not including exceptions for certain mutual funds), as defined in the AAMC's 2001 guidelines for individual financial interests, in a publicly traded sponsor of human subjects research conducted at or under the auspices of the institution;

3. Consulting fees, advisory board fees, remuneration, honoraria, gifts or other emoluments, or "in kind" compensation from a company that is i) the sponsor of human subjects research at the institution or ii) the manufacturer of a product to be studied or tested in human subjects research at or under the auspices of the institution, that in the aggregate exceed the *de minimis* amount as defined in the AAMC's 2001 guidelines for individual financial interests, or are expected to exceed that amount in the next 12 months;

4. An appointment to serve, in either a personal or representative capacity, in a fiduciary role for a company that is i) the sponsor of human subjects research at the institution or ii) the manufacturer of a product to be studied or tested in human subjects research at or under the auspices of the institution, whether or not remuneration is received for such service. Typically, the appointment will involve service as an officer, director, or other board member of the company.

5. An appointment to serve on the scientific advisory board of a commercial sponsor of human subjects research conducted at or under the auspices of the institution, unless the official has no current significant financial interest in the sponsor or the investigational product and agrees not to hold such an interest for a period of no less than three years following completion of any related research conducted at or under the auspices of the institution.

In addition to those circumstances indicated above, other financial relationships with research sponsors may warrant internal or external scrutiny, depending on the circumstances. Examples are listed below. The list is not intended to be exhaustive. In general, institutions should assess the potential for conflict of interest and weigh the magnitude of any risk to human subjects.

E. Individuals responsible for purchasing: When an investigator, research administrator, or institutional official with research oversight authority participates materially in a procurement or purchasing decision involving major institutional purchases from, or non-routine supply contracts with, a company that sponsors human subjects research at the institution, or whose product is being studied or tested in human subjects research at the institution.

F. Gifts from sponsors: When the institution has received substantial gifts (including gifts in kind) from a potential commercial sponsor of human subjects research or a company that owns or controls products being studied or tested in human subjects research. The following circumstances should be evaluated:

1. Whether a gift is of sufficient magnitude that even when held in the general endowment for the benefit of the entire institution, it might affect, or reasonably appear to affect, oversight of human subjects research at the institution;

2. Whether a gift is held for the express benefit of the college, school, department, institute or other unit where the human subjects research is to be conducted; or

3. Whether any institutional official who has the authority, by virtue of his or her position, to affect or appear to affect the conduct, review or oversight of the proposed human subjects research has been involved in solicitation of the gift.

Although the listed circumstances are potential areas of concern, the goal of this policy is not to preclude the institution from accepting philanthropy from companies that sponsor human subjects research, or that own or control products that are being studied or tested in human subjects research. Rather, the policy is intended to help the institution develop means of identifying and examining such circumstances, and of managing, through disclosure, separation of responsibilities, and as otherwise appropriate, any actual or apparent conflicts of interest that may result. All gifts should be accepted in conformance with these policies and reported to the development office for record-keeping purposes. Faculty members are accountable for adhering to institutional gift policies.

### *4. Administration of Institutional Conflicts of Interest Policy*

*[Comment: The responsibility for institutional COI administration should be assigned to an institutional office, and the reporting structure for the office should be to a senior official who can weigh the needs of the human research subjects protection program in particular and of the institution in general. The office will require access to sensitive data, so appropriate consideration to security must be given. The use of the office responsible for individual COI is expedient, given that office's general familiarity with COI issues, although the institutional nature of these issues means that their oversight and resolution will need to be at a high level.*

*For purposes of this template, the office responsible for individual COI is used, but whatever office is used, the relationship between the administration of the individual COI policy and the administration of the institutional COI policy should be clearly specified, including whether or not the same committee is used for evaluating and making recommendations and determinations regarding individual COI and institutional COI.*

*The reporting schedule for covered institutional officials to report their own financial interests should be identified in this section, if it is not separately addressed in the institution's individual conflict of interest policy.]*

Administration of institutional COI matters will be handled by the Conflict of Interest Office. In order to make the COI Office aware of potential institutional COI situations and transactions, the following offices should report at least quarterly to the COI Office on interests described in Section 3, above:

a. Technology transfer office (for licensing arrangements, patents, invention disclosures);

b. Office of sponsored programs, research administration, or corporate research relations (for sponsored research agreements and products that are the subject of research);

c. Development office (for gifts);

d. Grants office (for federal and state grants);

e. IRB (for human subjects research protocols).

*[Comment: Tracking of transactions of the type described in Section 3 would be greatly facilitated by the development of one or more comprehensive databases by the institution.*

*The issue of using the development office to track gifts will be institution specific. To ensure compliance with tax laws, enforcement of the provision that the gifts carry no quid pro quo, and tracking of potential institutional COI, it is highly recommended that this function be centralized in one or two primary offices. The institution should establish a unified database of gifts and promulgate consistent rules as to how gifts are processed. Institutional policy should provide clear and unambiguous guidelines for distinguishing between gifts and grants with respect to research and for requiring that all gifts should be processed through the development office.]*

The COI Office also will be provided by [insert office] with a list of reports submitted by covered institutional officials [add reporting schedule here]. These COI reports will be reviewed at least annually by the COI Office, and in the event they create a potential institutional COI, by the institutional COI Committee.

### *5. Composition of the Institutional Conflicts of Interest Committee*

*[Comment: In order to clarify the relationship between the administration of the individual COI policy and the institutional COI policy, this section must specify whether or not the same committee is used for evaluating and making recommendations and determinations regarding COI and institutional COI. If separate offices are to be established, the institutional COI composition must be defined in this section.]*

The institutional COI Committee will consist of at least seven members appointed by the institution's President/Chancellor (or his/her designee), of whom at least two will be members of the public with no active transactional relationships with the institution. One of the public members should have no institutional affiliation at all. In case of the public member(s) affiliated with the institution (for example, alumni), care should be taken that neither they nor their immediate family members are on the institution's payroll. At least two members of the institutional COI Committee should be appointed from the standing individual COI Committee(s). A quorum will consist of four voting members, at least one of whom should be a public member.

Members of the institutional COI Committee should be free of responsibility for institutional supervision of the human subjects research protection program. They can, however, be principal investigators on human subjects research projects. They should abstain from institutional COI Committee business when they have a personal COI or involvement in institutional COI that relates to a research proposal under review, as provided by institutional policy.

*[Comment: The composition of the institutional COI Committee as described above is arbitrary and should be consistent with the size of similar committees at the institution. It may be the same as, overlapping with, or different from the membership of the COI committee. The use of public members is important for the credibility of the institutional COI process, and the appointment of more than one public member may emphasize the institution's goal of meaningful oversight, but the appointment of outside members may not be feasible in some institutions because of particular institutional governance provisions or policies.]*

### *6. Review and Management of Institutional Conflict of Interest*

*[Comment: This section presumes that the institution has chosen to assign responsibility for administration of the institutional COI policy to its COI office (the office responsible for administering the institution's policy on individual COIs). It further presumes that the COI Office conducts a preliminary review and then transmits potential institutional COI cases to the institutional COI Committee that the institution has chosen to establish, instead of using the same committee that is responsible for reviewing potential individual COI. These choices will be institution-specific but should be specified.]*

When a potential institutional COI that involves a human research project is identified, the COI Office will notify the IRB and the sponsored programs office (if the institutional COI involves a sponsored project). The COI Office will review the potential institutional COI and prepare a document describing the case and the nature of the real or potential institutional COI. In cases involving presumptive institutional COI, the case document will be referred to the institutional COI Committee.

*[Comment: The institution may choose to specify categories of institutional COI, including presumptive institutional COIs that present no risk to the integrity of research and no risk for human subjects and can be handled administratively with defined management plans and documentation. Such categories should be reviewed periodically by the institutional COI Committee. An example of a low level of concern is the case where the chair of a department holds stock in the sponsor of human subjects research conducted in some other department within the medical school but has no involvement in the research or administrative responsibility for it.]*

When a potential institutional COI is identified, the institutional COI Committee shall apply a **rebuttable presumption** that either the financial interest should be eliminated or the human subjects research should not be conducted at the institution. The presumption may be rebutted if the circumstances are deemed compelling by the institutional COI Committee, and provided that the Committee approves an effective institutional COI management plan. Whether the presumption is successfully rebutted will depend in each case upon an analysis of:

a. the nature of the science,

b. the nature of the overlapping interests,

c. how closely the interest is related to the research,

d. the degree to which the interest may be affected by the research,

e. the degree of risk that the research poses to human subjects and the integrity of the research, and

f. the degree to which the institutional COI can be effectively managed.

The Committee should consider whether the institution is uniquely qualified, by virtue of its attributes (e.g., special facilities or equipment, unique patient population) and the experience and expertise of its investigators, to conduct the research and safeguard the welfare of the human subjects involved.

If it is determined that there are compelling circumstances for allowing the research to proceed in the presence of the institutional COI without elimination or significant reduction of the financial interest, those circumstances should be documented in the institutional COI Committee report on the matter. Management plans for approved institutional COI arrangements should be designed effectively to address: 1) the nature of the conflict; 2) the specific risks to human subjects; 3) the perceived risk to the integrity of the research as a result of the conflict; and 4) the perceived risk to the reputation of the institution.

One or more of the following management strategies should be used:

a. Disclosure of the institutional COI in the informed consent process;

b. Where the institutional COI involves a senior official, formal recusal of the conflicted official from the chain of authority over the project and possibly also from authority over salary, promotion, and space allocation decisions affecting the investigator, as well as communication of the recusal arrangements to the official's superior and colleagues. (Note that recusal is not an effective management strategy when the individual, by virtue of conflicts arising from personal financial holdings, would be precluded from fulfilling the responsibilities of his or her position. In such cases, the best interests of the institution may necessitate that the individual divest the interests or vacate the position.)

c. Where the institutional COI involves a senior official, designation of a "safe haven" (e.g., a non-conflicted senior individual) with whom the investigator can address institutional COI-related concerns;

d. Use of an external Institutional Review Board (since most institutional IRBs are composed of faculty and staff from the institution);

e. External monitoring of the study, particularly endpoint assessments;

f. Use of an external DSMB or similar review board to evaluate the design, analytical protocols, and primary and secondary endpoint assessments, and to provide ongoing evaluation of the study for safety, performance issues and the reporting of results;

g. Disclosure of the institutional COI in public presentations and publications;

h. Disclosure of the institutional COI to other centers in a multi-center trial.

*[Comment: Chapter 3 of this Report provides a full discussion of management techniques.]*

The report and the recommended decision should be transmitted to [insert decision-maker here, e.g. dean, vice president, etc.] for final determination. Approval of management plans will be initially by school deans (or their designees) or by the senior institutional research officer, although the final authority rests with the President and Board of Trustees. Appeals from initial decisions will follow regular institutional appeal procedures. Review of compliance with management plans will be performed by [insert name of institution office].

The COI Office should provide the institutional COI Committee's decision and the underlying report to the IRB and the sponsored programs office (if the institutional COI involves a sponsored research project) so that the IRB review of the project can consider the deliberations and recommended handling of the institutional COI, and so that the sponsored research office can meet its applicable reporting obligations.

### *7. Implementation*

Each institutional COI management plan should state specifically who will be responsible for the plan's implementation. Adherence to the management plan will be evaluated by the institution's [insert office name].

*[Comment: Issues related to the oversight of implementation should be tailored to the offices at the Institution responsible for monitoring compliance. Institutions may wish to define sanctions for those officials who fail to comply.]*