CONFLICTS OF INTEREST AND COMMITMENT POLICY

NMC Conflict of Interest Policy Statement

Active participation by resident New Mexico Consortium (NMC) researchers and staff (full- or part-time) in external activities that enhance their professional skills or constitute public service can be beneficial to NMC as well as to the individual and is encouraged. Nonetheless, a need exists for a general framework against which the propriety and advisability of non-NMC activities can be measured and monitored.

Subject to this general standard, researchers and staff should appropriately use their own judgment in deciding whether to engage in external activities. The NMC recognizes that researchers and staff are professionals and requires that they remain alert to the possible effect of outside activities on the integrity of their decisions and their ability to fulfill their obligations to NMC. However, NMC will review potential agreements between NMC employees and external institutions before the agreements are signed by the employees. Employee must request the review by sending an email or a signed Conflict of Interest form to hr@newmexicoconsortium.org with an attached copy of the agreement.

Definitions

A conflict of commitment arises when the external activities of a researcher or staff member are so demanding of time or attention that they interfere with the individual's responsibilities to NMC.

A (financial) conflict of interest, (F)COI, occurs when the researcher or staff member is in a position to advance one's own interests or that of one's family or others, to the detriment of NMC.

In this policy, CEO refers exclusively to the Chief Executive Officer of the NMC, and COO refers exclusively to the Chief Operating Officer of the NMC.

In this policy, ‘Partner Institutions’ refers to Los Alamos National Laboratory, University of New Mexico, New Mexico Institute of Mining and Technology and New Mexico State University. The CEO may, at his or her discretion, add to this list. Researchers and staff will be informed of any updates to Partner Institutions.
In this policy, ‘Significant Financial Interest’ (SFI) means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria) exceeding $5,000 per year; equity interest (e.g., stocks, stock options or other ownership interests), and intellectual property rights (e.g., patents, copyrights and royalties from such rights); and ownership representing the lesser of $10,000 or 10% of the equity in the outside organization.

The term ‘Significant Financial Interest’ does not include:

a. salary, royalties, or other remuneration from NMC

c. income from seminars, lectures, or teaching engagements sponsored by public or non-profit entities.

d. income from service on advisory committees or review panels for public or nonprofit entities.

e. an equity interest that, when aggregated for the employee and the employee’s spouse and dependent children, meets both of the following tests: (i) does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value; and (ii) does not represent more than a 5% ownership interest in any single entity; or

f. salary, royalties, or other payments that, when aggregated for the employee and the employee’s spouse and dependent children, are not expected to exceed $10,000 during the prior twelve-month period.

Conflict of Interest (COI) Policy

It is the policy of NMC that researchers and staff have an obligation to avoid unacceptable ethical, legal, financial, or other conflicts of interest. It is also the policy of NMC to ensure that employees’ activities and interest do not conflict with their obligations to the NMC or to the welfare of the NMC and its sponsors. Specifically, an NMC employee’s first responsibility is to the NMC and its Partner Institutions. No employee will act in such a way as to compromise this responsibility. No employee may use any NMC resources to advance their personal gain, or the gain of others with whom they are related in any manner, via family or contractual obligations, without written permission of the CEO. Furthermore, no NMC employee will conduct business through the NMC in any way with any company in which he/she has Significant Financial Interest without prior written permission of the CEO.
It is the policy of NMC that researchers or staff engaging in an outside activity or possessing a personal interest that could lead to a significant conflict of interest or commitment must immediately disclose that possibility by filing a disclosure form with the CEO. Researchers or staff members not engaged in such activities or possessing such interests need only affirm this fact on the disclosure form.

If the CEO, having been provided with all pertinent information, determines that the individual's situation presents a significant conflict of interest or commitment, that situation must be resolved in accordance with this policy.

NMC employees are encouraged to disclose whenever they are in doubt about the possibility that a conflict of interest may exist. This protects both the NMC and employee against possible future adverse repercussions.

**NSF and PHS Requirements**

**A. National Science Foundation (NSF).** Researchers who plan to apply for NSF funding must provide all required financial disclosures at the time the proposal is submitted to NSF. Those financial disclosures must be updated during the period of the award as new reportable significant financial interests are obtained.

The NMC is required to inform the NSF’s Office of the General Counsel of any conflicts of interest that have not been managed prior to expenditure of award funds, and keep the agency informed if a conflict cannot be managed successfully.

**B. Public Health Service (PHS).** To promote objectivity in federally funded research, the U.S. Public Health Service (PHS) Health and Human Services (HHS) issued a regulation, 42 CFR Part 50 Subpart F, on financial disclosure for Public Health Service (PHS)-funded investigators. This regulation requires additional financial disclosure and training for each investigator who will participate in research funded under PHS grants or cooperative agreements. The term “investigator” means the project director or principal investigator and any other person, regardless of title or position, who is responsible for the design, conduct or reporting of PHS-funded research or proposals for such funding.

The responsibilities of a PHS-funded investigator include:

- Becoming familiar with the PHS regulations and the NMC's COI policies
- Completing COI training prior to starting the expenditure of funding and, thereafter, at the required intervals, at least once every four years
- Disclosing SFIs to the NMC no later than at the time of applying for PHS funding
• Update the disclosure prior to starting expenditure of grant funds and at least annually during the period covered by the grant, or within 30 days of identifying or acquiring a new SFI.

• Complying with any management plan issued by the institution and retaining documentation that demonstrates compliance.

The NMC must inform the PHS, prior to the expenditure of research funds, of the existence of any actual conflicts of interest in the funded research, and it must provide assurances of their management in accordance with federal requirements. The NMC also must report and handle subsequently arising conflicts in PHS-funded research within 60 days after their identification.

If an FCOI determination is made, prior to the expenditure of any research funds, the NMC is required to develop and implement a management plan to reduce or eliminate the FCOI, and ensure, to the extent possible, that the research will be free from bias. Common management plan elements include:

• Public disclosure of the conflict of interest in publications and presentations
• Disclosure to human subjects participating in the research
• Informing other research team members
• Appointment of an independent third party to monitor the research
• Changing personnel or personnel roles in the research

The investigator is required to confirm agreement with the NMC's management plan, and the NMC is required to monitor the investigator's ongoing compliance with the management plan on an annual basis during the period of the research award. Therefore, it is the responsibility of the investigator to verify compliance by retaining documents such as notices to journal editors or conference audiences, consent forms from human subjects research, or notices to research personnel.

*If your research or employment is funded by a PHS agency (e.g., NIH, CDC, etc.), this regulation will affect you. Training and disclosure are required. Links to the list of PHS agencies, training portal, and PHS FCOI form can be found at [http://newmexicoconsortium.org/home/inside-nmc](http://newmexicoconsortium.org/home/inside-nmc) or [https://newmexicoconsortium.org/inside-nmc/conflict-of-interest/](https://newmexicoconsortium.org/inside-nmc/conflict-of-interest/).*
Ongoing Disclosure Responsibility

Disclosure requirements apply for the duration of employment with the NMC. Employees must disclose any of the following, among other things, that occur at the time the proposal is submitted to NSF and during the sponsored NMC research:

a. A new SFI that would reasonably appear to affect the NMC activity.

b. A new SFI in an entity whose financial interests would reasonably appear to affect the NMC activity.

c. A new situation that could call into question the employee’s professional commitments or primary allegiance to NMC.

d. A significant change to a previously reported disclosure.

Examples of allowable income-generating activities

The following are offered as examples of external, income-generating activities that are not considered conflicts of interest. They are exempt from reporting requirements, unless they are so extensive in time and effort that they constitute a potential conflict of commitment.

a. Receiving honoraria, stipends, and/or royalties for published scholarly works and other writing, creative works, lectures, and/or presentations less than $5,000 per year from a single entity.

b. Participating at professional conferences for the purpose of making scholarly presentations, conducting seminars or workshops.

c. Receiving honoraria for serving as a special reviewer or on a review panel for academic, governmental, or not-for-profit organizations.

d. Receiving royalties under the NMC's or another academic institution's royalty distribution policies.

e. Preparing books, articles, software, and creative works relevant to NMC duties.

f. Earning income from passive investments such as interest or dividends from banks, mutual funds, or stocks and bonds.

g. Any work performed for or benefiting Partner Institutions.
Examples of potentially conflicting activities or those requiring prior approval and potential management

The following activities represent examples of potential or actual conflicts of commitment or interest. While they do not necessarily imply conflict of interest, they do require review and possible management of conflict of interest or commitment by the CEO. The list is not inclusive and is intended to provide guidance. Where noted, activities of this type involving Partner Institutions would generally not be considered conflict of interest or require disclosure; however, it is recommended that the CEO be consulted in any ambiguous situation.

a. Failing to fully meet NMC responsibilities (as agreed to in contract letters) due to involvement in external activities.

b. Having a significant financial interest that could directly and significantly affect the design, conduct, or reporting of research or other NMC activity.

c. Using NMC resources to conduct research that is sponsored by an entity in which the researcher, staff member or his/her family member holds a Significant Financial Interest.

d. Serving in an executive or managerial capacity or holding Significant Financial Interest in for-profit or not-for-profit entities doing business with NMC. (Partner Institutions excluded.)

e. Recruiting NMC employees to other institutions without prior approval by NMC administration.

f. Serving on either the board of directors or a major advisory committee of an external entity that sponsors the researcher's/staff member's research or provides gift funds for the use of the researcher/staff member.

g. Utilizing NMC post-doctoral fellows, students, or employees in consulting activities and/or research sponsored by an entity in which the researcher or staff member has financial interests.

h. Conducting testing of products, devices, or services owned or controlled by a business in which the researcher or staff member or a member of his/her family has a financial interest or receives remuneration.

i. Diverting research or education opportunities from NMC to another academic institution, federal laboratory, business, or consulting entity. (Partner Institutions excluded.)
j. Directing purchasing opportunities to a family-owned company or an associated entity.

k. While acting in the context of his/her NMC duties, making professional referrals to a business in which a researcher, staff member or a member of his/her family has a financial interest.

l. Conducting non-NMC business activities involving NMC employees.

m. Solicitation for funding on behalf of any non-NMC beneficiaries at NMC-sponsored events. (Partner Institutions excluded.)

n. Any outside consulting that could provide the sponsoring outside entity with knowledge or data that may be used to give the outside entity an advantage in securing IP that otherwise would be secured by the NMC, its Partner Institutions, or its research sponsors.

Review of Disclosures and Management of Conflicts of Interest

With each

a. NSF or PHS proposal
b. Acceptance of PHS funding
c. PHS progress report, incremental funding, or extension
d. new hire
e. new SFI disclosure
f. new other COI disclosure

employees’ COI disclosures will be reviewed by the COO (or designee) to determine whether there is any Significant Financial Interest or other COI that reasonably appears to be related to NMC activities in which the employee is engaged.

If COO (or designee) concludes that an Investigator's Significant Financial Interest or other COI reasonably appears related to the NMC activity, the Disclosure and appropriate documentation shall be forwarded to the CEO for review.

The CEO will review the documentation and the disclosure to determine whether the SFI or other COI related to the NMC activity appears to directly and significantly affect the NMC activity, including the design, conduct, or reporting of the activity and thereby constitutes a (F)COI that may need to be eliminated, reduced, or managed.
When the CEO determines that there is a Financial or other Conflict of Interest, the CEO works with the conflicted employee to develop a plan to eliminate or manage the (F)COI ("management plan"). The plan shall be implemented either as soon as possible, or, as applicable, before the conflicting NMC activity starts, before accepting the PHS funding, or prior to expenditure of NSF funding. The management plan shall specify the actions that are required to manage the (F)COI, and may include:

a. The role and principal duties of the conflicted employee;
b. Conditions of the management plan;
c. How the plan will safeguard objectivity in the NMC research/activity;
d. Confirmation of the employee’s agreement to the plan;
e. How the plan and employee’s compliance with the management plan will be monitored on an ongoing basis until completion of the project;
f. How the plan will be modified;
g. Other actions may include

1. Public disclosure of the conflict
2. Divestiture of the investigator's conflicting financial interests
3. Monitoring of the research by independent reviewers
4. Escrow of an equity interest until certain triggering conditions are met
5. Prohibition on the investigator's involvement in contract negotiations for the research
6. Severance of the investigator's relationships that create the conflict
7. Disqualification of the investigator from participation in the part of the research that would be affected by Significant Financial Interests

No conflicts may be waived. If a conflict of interest cannot be managed, the investigator must withdraw from the research and the NMC may need to decline acceptance of the award or terminate the sponsored agreement.

Enforcement Mechanisms

The Final responsibility for this policy resides in the CEO, who reviews reports of potential conflicts and determines the remedies. If remedies that are mutually satisfactory to the researcher or staff member and NMC are not reached, the NMC may impose a sanction. Sanctions for violating this Policy depend on the severity of the violation and range from reprimand to dismissal.
In addition, whenever a financial conflict of interest is not identified or managed in a timely manner, including failure by the employee to disclose a Significant Financial Interest or other potential COI that is determined by the NMC to constitute a conflict of interest; failure by the NMC to review or manage such a conflict of interest; or failure by the employee to comply with a conflict of interest management plan, the NMC shall, within 120 days of the determination of noncompliance, complete a retrospective review of the employee’s activities to determine whether any research, or portion thereof, or other activity conducted during the time period of the noncompliance, was biased in the design, conduct, or reporting of such research or activity.

The NMC is required to document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

a. Project number, as applicable;

b. Project title, as applicable;

c. PD/PI or contact PD/PI if a multiple PD/PI model is used;

d. Name of the employee with the COI;

e. Name of the entity with which the employee has a conflict of interest;

f. Reason(s) for the retrospective review;

g. Detailed methodology used for the retrospective review (e.g., methodology of the review process, composition of the review panel, documents reviewed);

h. Findings of the review; and

i. Conclusions of the review.

Based on the results of the retrospective review, if applicable, the NMC shall update the COI report previously submitted to the awarding agency, specifying the actions that will be taken to manage the financial conflict of interest going forward. If bias is found, the NMC is required to notify the awarding agency promptly and submit a mitigation report to the awarding agency. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above and a description of the impact of the bias on the research project and the NMC ‘s plan of action or actions taken to eliminate or mitigate the effect of the bias (e.g., impact on the research project; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the research project is salvageable).
Depending on the nature of the conflict of interest, the NMC may determine that additional interim measures are necessary with regard to the employee’s participation in the sponsored research project between the date that the conflict of interest or the employee's noncompliance is determined and the completion of the NMC's retrospective review.

Records

The NMC will maintain records of all COI disclosures and of all actions taken to resolve conflicts of interest for at least three years beyond the termination or completion of the grant to which they relate, or until the resolution of any awarding agency’s action involving those records, whichever is longer.

The NMC’s Conflict of Interest policy is posted on the NMC public website at https://newmexicoconsortium.org/inside-ncm/policies-guidelines/.

Information concerning identified COI by senior/key personnel will be made available to any requester within 5 calendar days of a written request to NMC by email to hr@newmexicoconsortium.org or by mail at 4200 West Jemez Road, #301, Los Alamos, NM 87544.
ADDENDUM 1.

Department of Energy Interim Conflict of Interest Policy

Applicability. As required by 2 CFR 200.112, DOE established the interim COI policy governing financial conflicts of interest and organizational conflicts of interest concerning

- applicants for, and
- recipients of

Federal financial assistance awards from DOE. The DOE Interim COI Policy applies to all DOE-funded financial assistance awards (e.g., a grant, cooperative agreement, or technology investment agreement) issued on or after June 18, 2022, as well as to mods to FOAs issued on or after June 18, 2022.

Implementation. The interim COI policy is largely aligned with the long-standing conflict of interest regulations established by the Public Health Service at 42 CFR part 50, Subpart F, as outlined in the NMC CONFLICTS OF INTEREST AND COMMITMENT POLICY, p.3.

To minimize the implementation burden on NMC, NMC will use the NMC COI form for DOE SFI disclosures.

Disclosure. Each Investigator who is participating in the DOE award must

- Disclose SFIs no later than the time of application for the DOE award
- Complete COI training (funds cannot be released until the disclosure and training are approved and completed)
- Disclose annually and within 30 days of a new SFI

submit an updated disclosure of significant financial interests at least annually. Use the NMC COI form.

Training. Investigators are required to complete training prior to engaging in a project funded by a DOE financial assistance award, at least every four years thereafter, and immediately under the circumstances designated in the DOE interim COI policy.
References


COI Training: https://newmexicoconsortium.org/inside-nmc/conflict-of-interest-training/