

Policy: 2-30 Rev: 5

Date: July 18, 1994

Subject: CONFLICTS OF INTEREST**I. PURPOSE**

In carrying out its primary missions of teaching, research and community service, the university must implement a diverse set of principles: maintaining academic freedom and an atmosphere that promotes free and open scholarly inquiry; facilitating the transfer of technology and other developments for the benefit of the public; and serving as the steward of public and private resources entrusted to it. The university recognizes the value of the transfer of technology and other developments to further the economic development of the state and the nation, and has adopted policies to facilitate such transfers.

Given the diverse nature of the university's goals, potential and actual conflicts of interest are inevitable. The purpose of this policy is to set forth guidelines for distinguishing among unacceptable conflicts of interest, potential and actual conflicts that are acceptable with appropriate disclosure and oversight, and situations that are acceptable without approval or oversight. It also sets forth procedures for disclosure, review and approval of situations that are identified as presenting actual and potential conflicts of interest

II. REFERENCES

Utah Public Officers' and Employees' Act, Utah Code, 67-16-1 et seq.

Policy and Procedures 2-9, Termination of Nonacademic Staff Employees and Disciplinary Sanctions

Policy and Procedures 2-26, Remunerative Consultation and Other Employment Activities

Policy and Procedures 2-67, Additional Compensation and Overload Policy

Policy and Procedures 2-70, Use and Security of Property

Policy and Procedures 4-4, Restricted Purchases and Special Procurement

Policy and Procedures 4-8, Procurement from Vendor in which University Employee has an Interest

Policy and Procedures 8-12.4, Code of Faculty Responsibility

III. APPLICABILITY

This policy applies to all university employees.

IV. DEFINITIONS

"Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation or other organization or entity used in carrying on a business, including parent organizations of such entities or any other arrangement in which an entity operates through a

subsidiary.

"Immediate family" means parent, sibling, spouse, child, or spouse of any of the foregoing.

"Intellectual property" means any ideas, inventions, technology, creative expression and embodiments thereof, in which a proprietary interest may be claimed, including without limitation, patents, copyrights, trademarks, know how and biological materials. This policy is intended to affect only that intellectual property owned by the university. It does not alter other university policies that determine ownership of Intellectual Property.

"Potential conflict of interest" means any outside activity, commitment or interest that may adversely affect, compromise or be incompatible with the obligations of an employee to the university or to widely recognized professional norms.

"Significant financial interest" means (1) the ownership, either legally or equitably, of at least 10 percent of the outstanding stock of a publicly held corporation, a 10 percent interest in any other business entity, or an interest reasonably valued at \$5000 or more in any corporation or other business entity where such interest is one percent (1 percent) or more of the equity of the corporation or other entity; (2) the holding of any equity interest in any privately held corporation; (3) the holding of a position as an officer, director or employee of a business entity; or (4) a contractual relationship with the entity resulting in compensation in the amount of \$5000 in the aggregate in the preceding 24 months or during the period of the sponsored project or technology license or assignment. "Significant financial interest" includes such interests held by an employee or an employee's immediate family member. Notwithstanding the foregoing, "significant financial interest" does not include interests held indirectly through funds, such as mutual funds and pension funds, in which the interested party does not control the selection of investments.

"Technology transfer" includes any license, assignment, or conveyance of any other legal or equitable interest in intellectual property owned by the university, including but not limited to the right to make, market, copy, sell or use such property in any way.

V. OVERVIEW OF POLICY

Because of the contributions that university employees can make to the economic and intellectual life of the community at large, the university recognizes that many potential conflicts of interest do not constitute actual conflicts or are acceptable with proper oversight and safeguards. To avoid even the appearance of impropriety, however, this policy requires disclosure to appropriate university authority of all situations involving university employees that are identified in section V.B. below as presenting a significant potential conflict of interest. Additionally, section V.B. identifies some situations as acceptable while others are deemed acceptable with approval and, in some cases, oversight. A third, important category delineates prohibited conflicts of interest.

To implement this scheme, this policy prescribes procedures for disclosure, review and approval where required, and for the exercise of ongoing oversight where necessary as a condition of approval. It also provides for review of decisions at higher levels of university administration. Lastly, it indicates the sanctions that may be applied for violations of the policy.

This policy overlaps with but does not supplant university employees' responsibilities under the Utah

Public Officers' and Employees' Ethics Act, Utah Code Annotated 67-16-1 et seq. (the Ethics Act), which in some instances may include additional reporting responsibilities. In many instances, this policy is broader than the Ethics Act in the kinds of situations covered. The Office of General Counsel of the university will review disclosures of potential conflicts of interest and make a determination of whether disclosure to the Office of the Attorney General is required under the Ethics Act.

VI. CONFLICTS OF INTEREST SITUATIONS

This section identifies situations that present potential conflicts of interest and categorizes them according to whether they are acceptable, in which case disclosure is usually not required, acceptable under some conditions, which requires disclosure and prior approval, or never acceptable. Other sections of the policy describe the procedures and guidelines for disclosure and approval.

A. CLASSIFICATION SYSTEM

1. **ACCEPTABLE** (designated in sections that follow as "ACCEPTABLE"). This category is intended to identify situations that present the appearance of conflicts of interest that in fact are not conflicts of interest or which have only a minimal potential for an actual conflict of interest.
2. **ACCEPTABLE WITH APPROVAL** (designated as "APPROVAL REQUIRED"). This category includes situations that represent a substantial potential for conflicts of interest, but which nonetheless may be acceptable in some circumstances. In such cases, prior administrative approval is required and, where appropriate or necessary, conditions to the grant of approval or provisions for oversight shall also be imposed.
3. **NOT ACCEPTABLE UNDER ANY CIRCUMSTANCES** (designated as "NOT ACCEPTABLE"). These situations are those that present such serious conflicts with university policy or such a high potential for abuse that they cannot be rendered acceptable through the imposition of conditions or oversight. Thus, no disclosure or approval mechanism is contemplated by this policy. Engaging in conduct designated as NOT ACCEPTABLE is subject to disciplinary action in accordance with university policies and procedures and state law.

B. CLASSIFICATION OF POTENTIAL CONFLICTS OF INTEREST

This section classifies situations that present potential conflicts of interest into the categories described above. Covered situations are grouped by headings that represent common settings in which the situations in the same group are likely to occur. Some situations may fall under more than one heading. For example, consulting activities generally fall under a reporting requirement, but do not require approval as long as time limitations are complied with. On the other hand, sponsorship of research by a company for which the faculty member consults may require prior review and approval. In cases involving two applicable sets of requirements, the most stringent set of requirements applies.

1. **Influencing transactions involving the university for private gain.** This category of activities includes situations in which an employee may be in a position to benefit financially from the university's purchase of goods or services, including but not limited

to situations in which the goods or services are related to the performance of an employee's university responsibilities.

- a. Participation or assistance of others, by an employee or a member of the immediate family of an employee, in a transaction between the university and a business entity in which the employee has a significant financial interest **REQUIRES APPROVAL**. Participation includes any activity tending, directly or indirectly, to influence the selection of a vendor, including but not limited to the designation of possible vendors, the drafting of specifications or participation in the final decision process in connection with research proposals, purchase orders and the like. Approval should be granted when competitive bidding can be used to select the vendor, or when the business entity in which the employee has an interest is the sole vendor or one of few vendors that can supply the goods or services in question and it can be assured that the acquisition approximates an arms-length, competitive bidding process. Independent technical and financial review of the specifications, the selection process, and the price including the right to audit for "cost reasonableness," may be required as conditions of approval, if indicated.
- b. Solicitation or receipt by a university employee or a member of the immediate family of a university employee of a gift, compensation or loan of money, or a nonpecuniary gift, the value of which exceeds the amount permitted by state law, including but not limited to such remuneration from a person or business entity that is an actual or potential provider of goods or services to the university, (1) in connection with any transaction between the university and any person or business entity, or (2) under circumstances where it would tend to influence the employee's performance of his or her university duties, is **NOT ACCEPTABLE**. This prohibition is not intended to apply to the regular or ordinary compensation the employee receives from a business entity in situations covered by paragraph a, above, where approvals have been granted.

2. Use of university resources for personal activities.

- a. Except as provided in subsection b, the use of university property or facilities for pecuniary gain, or for personal advantage is **NOT ACCEPTABLE**, unless the use of such property or facilities has a legitimate relationship to the faculty member's academic service and such use causes no more than trivial cost to the university. No disclosure is required where the conditions of such limited use are met. For purposes of this section, professional activities which serve to maintain or improve an employee's skills and which do not violate university restrictions on outside activities have a legitimate relationship to the employee's service. Consultation involving service to individual patients or clients may take place in an employee's office or laboratory.
- b. Except as otherwise approved pursuant to this or other university policy or agreement, use of university facilities and equipment resulting in clearly identifiable additional cost to the university **REQUIRES APPROVAL**. Usually, approval of such situations will be conditioned on reimbursement of costs. Exceptions to the requirement for reimbursement may be approved by the line vice

president upon recommendation of the dean or director, subject to any conditions imposed by the vice president.

3. Inappropriate student activity.
 - a. Sponsored projects that include restrictions of student publication or communication rights with respect to research or other work that will be the basis of evaluation of the student or fulfillment of degree requirements, are permitted only to the extent reasonably necessary to obtain protection of intellectual property rights and so as not to prevent the publication of student research in a timely manner. Publication in a timely manner shall usually be the earlier of six months from the completion of the project or the completion of the student's degree requirements. Such provisions REQUIRE APPROVAL. In such instances, the student must be informed of the limitations before commencing the work.
 - b. Secrecy or confidentiality requirements beyond the scope of the foregoing on projects that will be the basis of evaluation of the student or fulfillment of degree requirements are NOT ACCEPTABLE.
 - c. Involvement of students in conducting or supporting research that has the potential to substantially benefit a business entity in which the faculty member has a significant financial interest REQUIRES APPROVAL. Approval shall be granted only where there is a demonstration that students will receive some academic benefit from their efforts. Approval shall not be granted where such research is motivated primarily by commercial concerns and will be the basis of evaluation of the student or fulfillment of degree requirements.
 - d. Subparts a - c are not intended to preclude the involvement of research assistants, research associates or postdoctoral fellows who are primarily university employees in support of commercial activities or work that will not be used for evaluation of a student or fulfillment of degree requirements, under arrangements otherwise consistent with this and other university policies.
4. Conflicts arising from employees having significant financial interest in a business entity whose operations are related to employee's university responsibilities. All of the situations described in this section have the potential for misallocation of resources or at least the appearance of misallocation of resources. Approval of arrangements in these situations should normally be based on the proponent's demonstrating that the activity significantly benefits the university and does not involve an unacceptable risk of misallocation of funds and other resources. Approvals will often be conditioned on technical and financial oversight of the project and any related activities, as well as reimbursement of all costs for uses of university resources that primarily benefit private entities.
 - a. Nonreimbursed involvement of faculty, students, research associates, or technicians or other staff supported by public funds, on university time, for work motivated primarily by commercial concerns or intended to benefit a business entity in which the employee has a significant financial interest, is NOT ACCEPTABLE.

- b. Research projects sponsored by a business entity in which a university employee who directly or indirectly has authority over expenditure of funds has significant financial interest **REQUIRES APPROVAL**. Reimbursed use of faculty, students, research associates, technicians or other staff supported by public funds, for work motivated primarily by commercial concerns or intended to benefit a business entity in which an involved university employee has a significant financial interest, **REQUIRES APPROVAL**, as defined below.
 - c. Any commitment designating a business entity in which an involved university employee has a significant financial interest, to provide equipment, supplies or services, or to receive a subcontract for goods or services, to be paid for from public funds or private research contract funds, **REQUIRES APPROVAL** as provided in subsection 1. Normally, such commitments should be reviewed when entered, e.g., in research grant applications or research contract negotiations.
 - d. Use of university or other public or private funds for expenditures that have the potential to significantly benefit a business entity in which a university employee has a significant financial interest **REQUIRES APPROVAL**. One example of this situation is the purchase of equipment that may be useful to a business for which the employee consults, or in which an employee has an ownership interest. Another example of this situation is a project involving testing of a product in which an employee has a significant financial interest, or a product that is a competitor of a product in which the employee has a significant financial interest.
 - e. Participation in connection with an employee's university responsibilities, in a decision that has the potential to significantly benefit or injure, directly or indirectly, a business entity in which the employee has a significant financial interest **REQUIRES APPROVAL**. The preferred procedure will normally be for the employee to withdraw from participation in the decision. In no event should the employee be the final decision-maker.
 - f. Transfer of university technology to a business entity in which the university employee inventor has a significant financial interest **REQUIRES APPROVAL**.
 - g. Proposals for research grants or contracts by a business entity in which an involved university employee has a significant financial interest, where subject matter of grant proposal is substantially related to the employee's university research and where the university is qualified and eligible to apply, **REQUIRE APPROVAL**.
 - h. Provision of goods or services related to a university employee's employment, in actual or potential competition with the university, **REQUIRES APPROVAL**.
 - i. Physician referrals to a business entity in which the physician has a significant financial interest **REQUIRES APPROVAL**.
5. Engaging in outside duties that implicate the university as a participant or that trade on or tarnish its goodwill or reputation.

- a. It is NOT ACCEPTABLE for a university employee to use the university's name in connection with private activities in a manner that inappropriately suggests that the university endorses, sponsors or approves of the activities or views of the employee. This prohibition is not intended to restrain any employee from the exercise of any other right or privilege, the conduct of lawful activity, the expression of viewpoint on any issue, or from the accurate identification of his or her affiliation with the university in connection with such activities.
 - b. A university employee advising a government agency on matters in which the employee has a significant financial interest, evaluating commercial competitors for a government agency, or consulting for a federal agency while conducting research sponsored by the agency, may be subject to agency conflicts of interest policies and disclosure requirements. Employees should remember that such requirements exist separate from and in addition to university requirements.
6. Outside activities that create incentives that are contrary to university policies, including legal and contractual obligations of the university.
- a. Confidential research or any constraints on full disclosure other than restraints necessary to obtain intellectual property protection REQUIRE APPROVAL. Approval shall be granted only when the proponent makes a showing that the project has lasting academic or other value to the university.
 - b. Arrangements in which the sponsor has the right to direct the course of research and research driven primarily by commercial considerations REQUIRE APPROVAL.
 - c. Arrangements that permit sponsor interference with the scientific analysis of research results or conclusions are NOT ACCEPTABLE.
 - d. Conflicts between an employee's outside activities and university commitments to sponsors of research involving the same employee are NOT ACCEPTABLE unless waived by sponsor.
 - e. Evaluation of junior faculty, staff or students based on participation in (or refusal to participate in) outside activities involving business entities in which the evaluating employee has a significant financial interest is NOT ACCEPTABLE. The involved employee should not participate in such evaluations.
7. Time spent on outside activities. University policy on consulting and other outside activities is covered elsewhere, primarily in university Policy and Procedures 2-26, Remunerative Consultation and Other Employment Activities. This policy is not intended to relieve university employees from any obligations or limitations under Policy and Procedures 2-26 or other policies of the university, and may impose additional limitations on such activities where implicated by other provisions of this policy.

VII. PROCEDURES

A. DISCLOSURE

This policy uses disclosure as the key mechanism to bring potential conflicts of interest to light for further evaluation, and for oversight, where necessary. Situations that require disclosure, or review and approval are identified in Section V. Procedures for disclosures are as follows:

1. **Purchasing.** This policy places restrictions on the involvement of employees in university purchasing decisions. A Purchasing Conflicts of Interest Form, designed and approved by the administration, shall be used to identify and report potential conflicts of interest related to the acquisition of goods and services, as provided below.
2. **Proposals for Sponsored Projects and Technology Transfers.** Many of the potential conflicts of interest identified in this policy are related to funded research and transfers of university-owned technology. A Research Conflicts of Interest Form, approved by the administration, shall be required as a part of all proposals for sponsored projects and technology transfers, for all university employees who will have authority to authorize expenditures under the sponsored project or who will receive payments from the technology transfer.
3. **Other Situations Subject to Review and Approval.** For situations subject to review and approval but not otherwise covered by the foregoing (e.g., nontrivial use of university facilities not otherwise disclosed in connection with grant applications, technology transfers, etc.), the employee shall submit a request in writing, explaining all pertinent circumstances, to the persons indicated below.

B. APPROVAL PROCESS AND APPEALS

1. **Conflicts of Interest Advisory Committee.** The Conflicts of Interest Advisory Committee, appointed by the president, shall be comprised of a faculty member from each of Medicine, Pharmacy, Science and Engineering, as well as three to six members from the campus at large, and the associate vice presidents from the offices of the vice presidents who do not have final approval authority in the instance in question. The Committee shall serve as an advisory body to the university administration on conflicts of interest issues, as provided in this policy.
2. **Review and Approval.** Subject to exceptions described below, review of conflicts of interest disclosures that require approval shall follow the following procedures:
 - a. **General Procedure for Matters Requiring Prior Approval.**
 - (i) Initial distribution shall be to the department chair and the cognizant dean.
 - (ii) Where a potential conflict of interest is disclosed, the initial recommendation for approval, disapproval, or approval with conditions (see below), shall be made by the dean (after consultation with the department chair), who shall forward the recommendation to the vice president with approval authority designated below.
 - (iii) The designated vice president shall have authority to approve, disapprove, or

approve with conditions any potential conflict of interest. The designated vice president shall also have the authority to refer the case to the Conflicts of Interest Advisory Committee, which shall recommend approval, disapproval, or approval with conditions to the designated vice president, who shall make the final decision.

(iv) In instances where the designated vice president intends to reject the employee's request, the vice president shall advise the employee of that intent and, if the employee so requests, shall refer the matter to the Conflicts of Interest Advisory Committee prior to a final decision.

(v) Where the designated vice president proposes to approve the employee's request over the contrary recommendation of the dean, then the chair, dean, or other interested administration officials may request that the vice president with approval authority refer to the Committee for review prior to a final decision. Referral shall be in the discretion of the designated vice president.

b. Sponsored Projects and Technology Transfers. Review and approval of potential conflicts of interest related to sponsored projects and technology transfers shall be conducted as part of the review and approval of the project or agreement. The Research Conflicts of Interest Form shall become part of each grant application or technology transfer package and shall be submitted with the package for all required levels of review within the university administration.

(i) The research vice president shall have final approval authority in all cases involving sponsored projects or technology transfers.

(ii) For proposals that may restrict disclosure or publication of students' work that constitutes a degree requirement or that will be the basis of evaluation of a student (see Section V.B.3), initial disclosure shall also be routed to the line vice president, who may make an initial recommendation to the vice president for research.

(iii) In proposals that designate vendors or subcontractors in which an involved university employee has a significant financial interest, the initial disclosure shall also be routed to the vice president for administrative services, who may make an initial recommendation to the vice president for research.

(iv) Disclosure of potential conflicts of interest related to technology transfers shall initially be distributed only to the director of technology transfer, who shall make an initial recommendation to the vice president for research.

c. Purchasing and Subcontracts for Goods or Services. This section covers a variety of situations, including potential conflicts presented by acquisition of goods or services from entities whose business is related to the employee's research or academic pursuits and acquisitions from business entities in which an employee has a significant financial interest, but whose business is unrelated to the employee's university employment.

(i) Review and approval of potential conflicts of interest concerning vendors or

subcontractors designated in proposals for sponsored projects is covered in subsection b.

(ii) Review and approval concerning acquisitions of goods or services not covered by (i), from an entity whose business is related to the employee's university research shall follow the procedures described in subsection a, provided that the initial disclosure shall be made on a Purchasing Conflicts of Interest Form. Initial distribution shall include the vice president for administrative services, who may make an initial recommendation to the vice president for research, who shall have final approval authority.

(iii) Review and approval of situations in which the potential conflict of interest is unrelated to the employee's university research shall follow the procedures of subsection a, provided that the initial disclosure shall be made on a Purchasing Conflicts of Interest Form, which shall also be distributed initially to the director of purchasing, who may make an initial recommendation. The vice president for administrative services is designated as final approval authority.

- d. **Potential Conflicts Involving Staff.** In situations involving review of potential conflicts of interest of staff, the foregoing subsections a - c are altered as follows:
- (i) In matters not involving research or teaching, the immediate supervisor and the director of human resources shall receive the disclosure and request for approval, and the director of human resources shall recommend action on the request. In such instances, the vice president for administrative services shall have final approval authority.
- (ii) In matters involving teaching, the vice president with approval authority shall be the line vice president.
- e. **Other Situations Requiring Prior Approval.** In situations requiring prior approval but not covered by subsections b and c, above, the vice president designated for final approval is the line vice president.
- f. **Potential Conflicts Involving Administrators.** The procedures in this section govern the review and approval of potential conflicts of interest involving administrators at the level of dean or director or higher.
- (i) Initial disclosure shall be made to the Conflicts of Interest Advisory Committee, which shall make a recommendation consistent with this policy.
- (ii) Final approval authority on matters involving research conflicts of interest shall be the vice president for research, except that for matters involving a vice president, the final approval authority shall be the president. In nonresearch matters, the final approval authority shall be the line vice president or, in the case of a potential conflict involving a vice president, the president.

VIII. SANCTIONS

A. EMPLOYEE CODES

Violation of this policy shall be considered a violation of university policy and regulations and shall be subject to the disciplinary procedures, including sanctions up to and including suspension and dismissal, provided in University Policies and Procedures, Code of Faculty Responsibility, Part V, Policy and Procedures 8-12.5, or Termination of Nonacademic Staff Employees and Disciplinary Sanctions, Policy and Procedures 2-9, as applicable. Additionally, employees who have received financial benefit from transactions in violation of this policy shall be liable for repayment of all financial benefits resulting from such violation.

B. ADMINISTRATIVE DISCRETION IN EXERCISE OF SUPERVISORY FUNCTIONS OVER RESEARCH ACTIVITIES

Compliance with this policy may also be enforced through the exercise of administrative responsibility for oversight of funded research and management of university facilities and other university property. Such enforcement measures shall include, but shall not be limited to:

- C. Freezing research funds or accounts.
- D. Rescinding contracts entered in violation of this policy or state law.
- E. Bringing legal action to recover the amount of financial benefit received by an employee as result of the employee's violation of this policy.
- F. The Utah Public Officers' and Employees' Ethics Act provides for civil and criminal penalties, and for dismissal from employment, for violations of its provisions.

G. REMEDIES CUMULATIVE

The remedies provided or referenced herein are cumulative and shall be deemed to include any other remedies required or provided by applicable state or federal law.

IX. OTHER LAW

This policy shall be deemed to include all requirements relating to conflicts of interest to which the university is subject under state or federal law.

Approved: Academic Senate 6/7/94
Board of Trustees 7/18/94