

II-3.10(B) UNIVERSITY OF MARYLAND PROCEDURES ON CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT

(Approved by the President, May 20, 2003)

1. Purpose

These procedures implement the Board of Regents (BOR) Policy on Professional Commitment of Faculty (II-3.10), the Board of Regents Policy on Conflicts of Interest in Research or Development (III-11.1); and University of Maryland Policy on Conflict of Interest and Conflict of Commitment (II-3.10(A)). These procedures outline the mechanisms by which the University will manage the process of identifying, assessing, and responding to potential conflicts of interest or commitment, consistent with State Ethics Law¹ and University policies. They are intended to guide officers, faculty, staff, and other employees at the University of Maryland in reviewing and managing the disclosure and resolution of conflicts of interest and commitment—real, apparent, or potential.

Neither these procedures, nor the law and Board of Regents' policies under which they have been adopted, exempt any University official or employee from any provision of State Ethics Law, except as specifically provided. Approvals granted under these procedures do not affect the application of other University and BOR policies or the obligation to adhere to other provisions of State Ethics Law.

2. Definitions

a. Unit Head

The role of the unit head is pivotal in these procedures. For the purposes of this document, the unit head is normally the chair or director in an academic department, or a similar official in a non-academic unit, unless a different individual is designated by proper authority.

b. Relationship

Restrictions on activities sometimes revolve around relationships of a faculty or staff member with other individuals or entities. As used herein, the term "relationship" includes any interest, activity, service, employment, gift, or other benefit or relationship with an entity not part of State government that would be prohibited by State Ethics Law if not disclosed and approved pursuant to UMCP and Board of Regents policy and these procedures. An interest or relationship of the spouse or other relative (e.g., parent, child, or sibling) of an officer or employee is included if it would create restrictions on the officer or employee under the conflict of interest provisions of the Ethics Law.

c. Research or Development

Activities associated with research or development may receive preferential treatment. As used herein, the term "research or development" means basic or applied research or development, and includes the development or marketing of University-owned technology, the acquisition of services of an official or

¹ Among other things, State Ethics Law generally prohibits University employees from having financial interests in or employment relationships (including consulting) with entities under the authority of the University or which have or are negotiating contracts or subcontracts with the University. Other employment relationships (including consulting) prohibited under State Ethics Law include those which would impair the impartiality or independent judgment of the employee and those involving an entity which is a party to a State contract (greater than \$1000) if the employee's duties include matters which substantially relate to the subject matter of the contract. State Ethics Law also prohibits State employees from: participating in matters in which they (or certain family members or business entities) have an interest; soliciting and accepting gifts; using the prestige of their office or confidential information for private gain; and representing parties in State matters for contingent compensation. The conflict of interest provisions of Maryland State Ethics Law are codified in Title 15, Subtitle 5 of the State Government Article of the Annotated Code of Maryland. (To find this online, go to <http://mlis.state.md.us/#stat> and click on Maryland Code Online.

employee by an entity for research and development purposes, or participation in State economic development programs.

3. Reporting Procedures

Faculty, staff, and other employees are required to report outside activities and potential conflicts of interest or commitment through two means, as expressed in the University's Conflict of Interest and Conflict of Commitment Policy.

First, they must provide to their unit heads (see Definition 2.a above) timely disclosure of any significant commitment to professional activities to be undertaken outside the University or outside the unit, or situations where conflict or the perception of conflict may occur. This disclosure should be made before any such commitment is finalized. This mechanism provides a timely opportunity to protect both the University and the individual from adverse consequences that conflicts of interest or commitment can produce. Guidelines for what constitutes a "significant" commitment will be established by each unit head, in consultation with the unit's faculty and with the approval of the Dean or the next level administrator.

Second, faculty and exempt staff must complete an Annual Report on Outside Professional Activities, which provides appropriate context in which the unit head can evaluate individual conflict issues, and from which the University can gauge broader trends.

In many cases, no further action is required of the individual. The following sections describe how any concerns will be resolved; the procedures are different for conflicts of interest as opposed to conflicts of commitment.

4. Resolving Conflicts of Commitment

In cases of potential conflicts of commitment, questions will normally be resolved at the level of the unit head, who is best prepared to judge whether the individual's commitment to institutional responsibilities is in jeopardy. If resolution cannot be made at this level, the matter should be addressed at the next higher level of supervision.

5. Resolving Conflicts of Interest in Research or Development

a. Activities Related to Research or Development

In recognition of the University's role in promoting economic and technological development in the State, the University has been given the authority (under State law and BOR policy) to consider and waive certain State Ethics Law conflict of interest constraints in connection with research or development activities.

Thus, certain relationships (see definition 2.b above) that would otherwise violate conflict of interest provisions of State Ethics Law (and/or University or federal policies) may be permitted under certain circumstances. First, they must involve entities engaged in, or having an interest in the outcome of, research or development (see definition 2.c above). Second, they must have been reported, reviewed, and approved in accordance with the following procedures.

These procedures do not apply to relationships of the President or a Vice-President (or similar official designated by the Board of Regents). Such relationships must be approved by the Board of Regents in accordance with its Policy on Conflicts of Interest in Research or Development.

b. Initial Determination by Unit Head

Based upon the disclosure to the unit head (see Definition 2.a above) of an employee's intended outside professional activity or situation, and in view of the employee's existing relation to such activities, if any, the unit head typically will determine whether there are any concerns about possible conflict of interest.

If neither the unit head nor the individual identify a potential conflict of interest, no further action will typically need be taken with regard to the disclosure under these procedures.

c. Conflict of Interest Form

If either the unit head or the employee expresses a concern that the activity or relationship may involve a possible conflict of interest, the faculty or staff member must complete a Research or Development Interest Disclosure Form (disclosure form). The form is available on line at <http://www.umresearch.umd.edu/ORAA/forms/umoraa.html>. The completed disclosure form provides information on the nature of the activity or relationship. Upon completion, the disclosure form is submitted to the unit head who forwards it for evaluation, through the appropriate dean or similar official, to the President's Advisory Committee on Conflict of Interest ("COI Committee"), a group composed of University faculty and administrators that reports to the Vice President for Research.

It should be noted that submission of a disclosure form may be requested by, or be advisable for the best interests of, the faculty, staff, or other employee concerned, as well as the University. In an era of increasing levels of outside professional activity and interaction with industry of productive research universities, situations can be complex with regard to possible conflicts. In some cases, review of a disclosure form may serve to guide and protect the individual faculty, staff, or other employees in pursuing outside interactions and relationships.

Once an activity or relationship has been approved, a follow-up report must be submitted in a timely manner whenever circumstances concerning the activity or relationship change significantly, including a final report when the activity or relationship ends. The University will request annual confirmation of any activity or relationship that remains in place from year to year.

d. Review of Conflict of Interest Form

i. General Background

After the disclosure form is submitted, the COI review and evaluation process may include further involvement of the faculty or staff member whose activities are being assessed, either by that person providing further information or by his or her assistance in exploring avenues to manage a conflict if one is found to exist.

The COI evaluation process culminates in a written notification from the COI Committee to the faculty or staff member of approval or disapproval by the University. Copies of approvals and supporting documentation are forwarded to the State Ethics Commission.

Because disclosure of a significant new outside professional activity or relationship is expected to be made before commencing the activity, it is important that the faculty or staff member make the disclosure in a timely fashion to allow sufficient time for consideration by the unit head and, if necessary, the COI Committee and the President. It is also important that the unit head and the COI Committee provide timely feedback and action so as not unreasonably delay action by the individual in pursuing the new activity.

ii. Initial Review by Unit Heads

Unit heads are responsible for conducting the initial review of the disclosure forms submitted by those within their unit. As part of that initial review, a unit head should attach to a disclosure form a "proposed management plan," including any mechanisms that the unit head considers to be appropriate for managing, reducing, or eliminating real or potential conflicts of interest.

The unit head shall forward the disclosure form, including proposed management plan, through the appropriate dean or similar official, to the COI Administrator. The COI Administrator is the Assistant Vice President for Research or his/her designee.

iii. Review by COI Committee

The COI Administrator shall forward the disclosure form for consideration by the COI Committee. The COI Committee shall have nine voting members: six faculty members appointed by the President, one of whom shall be appointed by the President to Chair the COI Committee; the Director of the Office of Technology Transfer, the Assistant Vice President for Research, and the Assistant Vice President for Research and Economic Development.

The COI Committee may require that further information be provided and is encouraged to seek information, advice and input from appropriate University personnel, including unit heads, deans, University Counsel and the faculty, staff, or other employees involved. The COI Committee may also consult, as appropriate, with the Maryland Department of Business and Economic Development and with federal agencies that have imposed regulatory requirements on federally funded research.

iv. Recommendation by the COI Committee

The COI Committee shall review the disclosure form and recommend to the President whether the disclosed relationship should be approved. The COI Committee may not recommend approval of any relationship that would:

- give improper advantage to the entity with whom the employee has a relationship ;
- lead to misuse of institution students or employees for the benefit of such entities;
- otherwise interfere with the duties and responsibilities of the official, faculty member, or other employee maintaining a relationship;
- be so influential as to impair impartiality in conducting research, interpreting research results, or determining research or other professional and employment priorities;
- present an unacceptable conflict of interest; or
- otherwise constitute a harmful interest or violate state or federal policies, or procedures, or the best interests of the University.

A recommendation for approval indicates the Committee's conclusion that any conflict or potential conflict is manageable, in accordance with these procedures and any approved management plan. A decision not to recommend approval signifies the Committee's conclusion that a conflict of interest exists that cannot be properly managed, and that the individual should refrain from participating in the activity or relationship.

The COI Committee's recommendations shall be forwarded, through the Vice President for Research, to the President.

v. Final Action by the President

The President shall review the recommendations of the COI Committee and make a written determination. Approval may be subject to such conditions or restrictions as the President requires. The President's determination is final.

Notice of the President's decision will be provided in writing to the faculty or staff member(s), unit heads and deans or similar officials involved. Among other things, any notice of approval should inform faculty, staff, or other employees of their continuing obligations to:

- ensure that their activities, statements, evaluations, recommendations, and judgments do not improperly give advantage to an outside entity;
- ensure that unauthorized statistics, documents, reports, comparison information, and other data are not disclosed that would improperly give advantage to an outside entity;
- be aware that legal restrictions regarding misusing their position for personal gain or gain of another, soliciting or accepting improper gifts, and representing a party before the Board of Regents or the Board of Public Works, or other State or local agency for a contingent fee, continue to apply notwithstanding any approval under these procedures;
- continue to adhere to other University policies and procedures, including those concerning conflicts of commitment and professional commitment of faculty.

Approval may be withdrawn if it is determined that an official, faculty member, or other employee misrepresented the nature of his or her interest in an entity, or if circumstances change in such a way as to create an unacceptable conflict of interest or a violation of University policy or applicable legal requirements.

e. Effect of Non-Compliance on Sponsored Projects

Non-compliance with the conflict of interest policy or these procedures may result in the suspension or termination of a sponsored project. Non-compliance could also result in restrictions on faculty, staff, or other employees with respect to future proposal submissions as well as other sanctions in accordance with University policies, State Ethics Law, or other applicable State or federal laws and regulations.

If the failure of an investigator to comply with conflict of interest policies or procedures has biased the design, conduct, or reporting of Public Health Service (PHS) funded research, the University must promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and may take, or refer the matter to PHS for, further action, which may include directions to the University on how to maintain appropriate objectivity in the funded project.

f. External Reporting Procedures and Record Retention

The COI Administrator shall submit quarterly reports of all approvals granted under these procedures involving State Ethics Law to the Chancellor of the University System of Maryland. The COI Administrator shall assist the University System, as requested, in providing supplemental information or developing additional reports or analyses needed for compliance with the reporting requirements of State Ethics Law.

Upon completion of the process, copies of all disclosure forms submitted in connection with research and development relationships that are approved shall be filed with the State Ethics Commission. The University, through the COI Administrator, will develop and maintain a file, available for public review, that will contain all approved relationships with applicable disclosure forms.

ORAA is responsible for providing the appropriate written notice to the awarding agency in those cases involving sponsored projects. As required by agency regulations, information regarding all conflicts of interest identified by UMCP will be made available to NSF or HHS upon request. Conflicts that cannot be satisfactorily resolved must be disclosed to NSF and PHS. In the case of PHS awards, notice must be given for all conflict of interest.

The Office of Research Administration and Advancement will maintain records of all financial disclosures and of all actions taken to resolve actual or potential conflicts of interest at least three (3) years after termination or completion of the sponsored project or after resolution of any government action involving those records, or as required by applicable state and federal regulations whichever is longer.

6. Resolving Conflicts of Interest Not Involving Research or Development

a. Conflicts of Interest Under State Ethics Law

When a conflict of interest not involving research or development arises in the context of State Ethics Law, the State Ethics Commission should be consulted. The State Ethics Commission has the sole authority to interpret State Ethics Law. At the request of the unit head or State Ethics Commission, consulting work or other activities may be suspended pending an opinion from the Ethics Commission. Faculty, staff, or other employees or a unit head may seek guidance about consulting with the Ethics Commission from the University's Office of Legal Affairs.

b. Conflicts of Interest Under University Policy

In cases of potential conflicts of interest under University policy that do not involve research or development or State Ethics Law, the question will normally be resolved at the level of the unit head. If resolution cannot be made at this level, the matter should be addressed at the next higher level of supervision.