



Notes

- o BOR III-1.11 is in the Faculty Handbook pp. 104-105 and is copied verbatim from BOR policy. There are no changes here
- o Draft procedures at the end are an adaptation of College Park's procedures (see II-310A-2 CP.doc and II-310B-4 CP.doc and which can also be found at <http://www.president.umd.edu/policies/>) and includes sections relating to Conflicts of Interest in Research or Development.
- o In the draft procedures, which is a draft of SU's response to III. A of BOR III-1.11, I left the piece about unit heads (chairs) being able to address and resolve these conflicts at their level. Some concern was expressed at the Senate that this might be more than a unit head is equipped to deal with. I tend to agree. If the committee also agrees that provision can be deleted and all potential conflicts could be sent through the unit head to the COI

POLICY ON CONFLICTS OF INTEREST IN RESEARCH OR DEVELOPMENT (BOR III-1.11)

I. Introduction

Maryland law encourages public senior higher education institutions to promote economic development in the State and to increase their financial resources through arrangements with the private sector, including collaborative research and development, commercial application of institution-owned intellectual property, and provision of technical assistance. To facilitate these purposes, the Maryland Public Ethics Law allows for the exemption of University of Maryland System personnel from some of that law's conflict of interest provisions. This policy establishes the essential elements of the procedures, to be adopted by each System institution, for obtaining such exemptions.

II. Policy

- A. A present or former official or employee of a constituent institution of the System, UMSA, UMBI, or CEES may have a relationship (as defined herein) with an entity engaged in research or development, or an entity having a direct interest in the outcome of research or development, which relationship would otherwise be prohibited by the conflict of interest provisions of the Ethics Law, if such relationship is disclosed and approved by the President of the educational institution in accordance with the institution's faculty conflict of interest procedures developed pursuant to this Policy.

B. The Chancellor, a Vice Chancellor, a President, or a Vice President or one holding a similar such position may have such a relationship only if the Board of Regents makes the following findings:

- (1) that participation by, and the financial interest or employment of, the official is necessary to the success of the research or development activity; and
- (2) that any conflict of interest can be managed consistent with the purposes of relevant provisions of the Public Ethics Law.

The Board shall promptly notify the State Ethics Commission in writing of any approval given under this paragraph. In the event that the Commission disagrees with any approval and provides notice to the Board within 30 days of the Commission's receipt of notice of the approval, the Board shall reexamine the matter. The Board shall adopt procedures for handling requests for approvals under this paragraph..

C. If the above conditions are not met, this Policy does not exempt a former or present official or employee from any of the provisions of the State Ethics Law.

D. Nothing in this Policy allows an exemption on the part of any official or employee of the System from the provisions of §15-505 ("Solicitation or acceptance of gifts of honoraria") of the State Government Article. Further, an official or employee of the System may not (1) represent a party for contingent compensation in any matter before the Board of Regents or before the State's Board of Public Works, or (2) intentionally misuse his or her position with the System for personal gain or for the gain of another person.

E. The approval of a relationship under this policy does not relieve the official or employee from the obligation to comply with other System and institution policies, including the System Policy on Professional Commitment of Faculty.

F. The Chancellor is encouraged to consult periodically with the Maryland Department of Business & Economic Development and with Federal agencies that regulate federally-funded research concerning the implementation of this policy.

III. Procedures

A. Each institution and UMSA shall develop procedures based on the above policy and the purposes of the Maryland Public Ethics Law as stated at Section 15-101 of the

State Government Article of the Maryland Annotated Code. The procedures shall be approved by the Office of the Attorney General and approved as to conformity with Maryland Public Ethics Law by the State Ethics Commission. The approved procedures shall be filed with the Office of the Chancellor.

B. Procedures shall:

- (1) Require timely disclosure of any relationship. The disclosure shall be filed with the State Ethics Commission, and maintained as a public record at the institution.
- (2) Subject to paragraph (5), require review of all disclosed relationships by a designated official who shall determine what further information must be disclosed and what restrictions shall be imposed in order to manage, reduce, or eliminate any actual or potential conflict of interest. The designated official shall also determine whether or not the disclosed relationship represents a harmful interest, as defined herein. If so, approval shall not be granted.
- (3) Include guidelines to ensure that relationships do not improperly give an advantage to entities with which the relationships exist, lead to misuse of institution students or employees for the benefit of such entities, or otherwise interfere with the duties and responsibilities of the official or employee maintaining the relationship.
- (4) Subject to paragraph (5), require that each relationship be approved or disapproved by the president of the institution, with such determination to be the final decision.
- (5) Require that any relationship maintained by the President or a Vice President, by the Chancellor or a Vice Chancellor, and by one holding any other position designated by the Board of Regents be approved by the Board of Regents.

IV. Reporting

Institutions shall submit to the Chancellor in a format determined by the Chancellor a quarterly report which shall include all approvals granted under this Policy. The Board of Regents shall report to the Governor, the Legislative Policy Committee of the General Assembly, and the State Ethics Commission, the number of approvals granted under this Policy and how this Policy and the procedures adopted pursuant to it have been implemented in the preceding quarter.

V. Definitions

- A. "Harmful interest" means an interest which is found to be so influential as to impair impartiality in the conduct of the research, the interpretation of the results of the research, and/or the determination of research or other professional and employment priorities.
- B. "Institution" as used in this policy means each constituent institution of the System, The University of Maryland System Administration, The University of Maryland Biotechnology Institute, The Center for Estuarine & Environmental Studies, and any other Unit of the System that the Chancellor shall designate.
- C. "Relationship" means any interest, service, employment, gift, or other benefit or relationship with an entity that would be prohibited by Title 15, Subtitle 5 of the State's Public Ethics Law if not disclosed and approved pursuant to this Policy and procedures adopted pursuant to it. "Relationship" includes any relationship of the spouse or other relative of an officer or employee if such relationship creates restrictions on the officer or employee under the conflict of interest provisions of the Ethics Law.
- D. "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 employee by an entity for research and development purposes, or participation in State economic development programs.

**Replacement BOR II-3.30
Approved by BOR August 1996**

Salisbury University Procedures on Conflicts of Interest in Research or Development

1. Definitions

a. Unit Head

The unit head is the chair of an academic department or a similar official in a non-academic unit, unless a different individual is designated by proper authority.

b. Relationship

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 Salisbury University 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 State Ethics Law¹.

c. Research or Development

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

2. Reporting Procedures

All university employees are required to report outside activities and potential conflicts of interest through two means.

First, they must provide to their unit heads timely disclosure of any commitment that involves a conflict of interest or the perception of a conflict of interest. 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 can produce.

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.

Second, employees must complete an Annual Report on Outside Professional Activities, which provides appropriate context in which the unit head can address conflict of interest issues, and from which the University can gauge broader trends.

4. 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 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. 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, pursuant to Section III, 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 Conflict of Interest (COI) Form. The form is available on line at <http://www.salisbury.edu/grants>. The completed COI Form provides information on the nature of the activity or relationship. Upon completion, the COI 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 Provost. It should be noted that submission of a COI Form may be requested by, or be advisable for the best interests of, the faculty, staff, or other employees concerned, as well as the University. In an era of increasing levels of outside professional activity and interaction with industry, situations can be complex with regard to possible conflicts. In some cases, review of a COI Form may serve to guide and protect the individual faculty, staff, or other employees in pursuing outside interactions and relationships.

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If an activity or relationship is approved as described below, 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 COI 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's 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 decision of approval or disapproval from the University (the President, upon recommendation from the COI Committee) to the faculty or staff member. 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 unit head (and, if needed, the COI Committee) provide timely feedback and action so as not to excessively delay action by the individual in pursuing the new activity. It is also important that the faculty or staff member make disclosure in a timely fashion so as to allow sufficient time for consideration by the unit head and, if needed, the COI Committee.

ii. Initial Review by Unit Heads

Unit heads are responsible for conducting the initial review of the COI Forms submitted by those within their unit. As part of that initial review, a unit head should attach to a COI 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 COI Form, including proposed management plan, through the appropriate dean or similar official, to the COI Administrator. The COI Administrator is the Director of the Office of Grants and Sponsored Research.

iii. Review by COI Committee

The COI Administrator shall forward the COI Form for consideration by the COI Committee. The COI Committee shall have seven voting members: five faculty members appointed by the President, one from each School and the Library and one of whom shall be appointed by the President to Chair the COI Committee; the Associate Provost and the Associate Vice President of Finance. 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.

iv. Recommendation by the COI Committee

The COI Committee shall review the COI 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. The COI Committee's recommendation for approval shall be forwarded, through the Provost, to the President. A recommendation against 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. In the case of COI Committee recommendation against approval, a faculty member who believes such a recommendation is a violation of his/her academic freedom shall have 10 business days to notify the Provost of this and to file an appeal to the Academic Freedom and Tenure Committee. If such an appeal is filed, the Provost will not forward the COI Committee's request to the President until the Academic Freedom and Tenure Committee heard the appeal and made its recommendation. If there is no appeal filed, the COI Committee's recommendations shall be forwarded, through the Provost, to the President.

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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 COI 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 COI Forms.

The Office of University Research Services 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 Salisbury University 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 Grants and Sponsored Research 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.