



## **II-3.10(A) UNIVERSITY OF MARYLAND POLICY ON CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT**

(Approved by the President May 20, 2003; Amended and approved on an interim basis by the President February 4, 2021, pending University Senate Action)

### **I. Purpose**

The mission of the University of Maryland, College Park (“University”) includes advancement of knowledge, support of the scholarly professions, and active participation in the cultural, technological, commercial, public policy, and social life of our communities. This mission is advanced when members of the University forge links outside the University as scholars, artists, consultants, participants in research and development ventures, advisors to government entities, and in other capacities that relate to their professional expertise. The University has strongly encouraged the development of such links in the past and will continue to do so in the future. The University recognizes, however, that these very positive interactions create the occasion for real, potential, or apparent conflicts of interest and commitment, any of which may result in legal or reputational harm to the individual and/or the University.

The intent of this policy is, in part, to provide guidance that will enable these extra-university liaisons to continue while avoiding situations that harm the individual and/or the University through real or perceived ethical, legal, or financial conflicts. Although such conflicts arise most often in connection when University personnel, including faculty, staff, and graduate research assistants (each an “Employee” and together “Employees”) engage in activities outside the University, this policy and procedures applies to all activities of Employees.

This Conflict of Interest and Conflict of Commitment Policy implements Board of Regents’ policies on Professional Commitment of Faculty (II-3.10) and Conflicts of Interest in Research or Development (III- 1.11). This policy is required by State Ethics Law<sup>1</sup> and failure to comply with this policy may be a violation of State law.

### **II. Overview**

This policy applies to all University Employees. The University is concerned with two broad kinds of conflict:

1. **Conflicts of interest (“COI”)**, which typically involve potential financial gain or personal benefit to an Employee or related individuals or entities; and
2. **Conflicts of commitment**, which typically arise when otherwise acceptable outside activities may compromise the fulfillment of an Employee’s basic job responsibilities to the University.

---

<sup>1</sup> See Maryland Code Annotated, General Provisions Article, § 5-525.

The University requires that its officers and Employees acting on the University's behalf disclose actual or potential ethical, legal, financial, or other conflicts of interest and commitment. Further, working with supervisors and University leadership, either these Employees must find a means to resolve or to manage<sup>2</sup> any conflicts, or they must not participate in the activities that give rise to the conflicts.

Situations where such conflicts may arise can be sufficiently complex that opinions differ as to whether conflicts actually exist, are likely to arise, or appear to exist. Accordingly, the University emphasizes two elements essential to the effective implementation of this policy:

1. **Full and prompt disclosure by the Employee** to an appropriate supervisor and, if a conflict of interest, to the COI Committee, of activities and interests outside the University or outside the unit. This disclosure enables potential conflicts to be reviewed and, if appropriate, properly managed; and
2. **Availability of University guidance** to Employees and to supervisors, through which the University provides continuing and relevant advice and clarification where the existence of a conflict of interest is uncertain, or where a conflict of interest – real, potential, or apparent – must be managed.

Personal responsibility, integrity, and high ethical standards are the principal factors in avoiding conflicts of interest, and the University expects that all officers and Employees will conduct their activities in a manner that reflects positively on themselves, their professions, and the University without need for specific criteria or rules of conduct.

Some situations, however, involve unique knowledge and understanding or are sufficiently complex that judgments may differ on whether or not there is a conflict of interest and/or conflict of commitment. Individuals of the highest integrity may, therefore, unknowingly place themselves in situations where real or perceived conflicts of interest exist. Liaison between the Unit head (typically defined as 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) and Employees is the principal means of communication and disclosure in matters involving professional activities and is the principal means by which conflicts of commitment should be addressed and resolved; conflicts of interest require disclosure to both the Unit Head and the COI Committee.

Dishonesty is a very serious matter that cannot be condoned and will be dealt with promptly in the following or related circumstances: stealing; lying about matters connected with work; falsifying records; making unauthorized personal use of University or government property; doing unauthorized private work on University time; and giving or receiving a bribe in any form. Such dishonesty is grounds for serious disciplinary action, up to and including termination of employment.

---

<sup>2</sup> To “manage” a conflict means to set procedures in place that will serve to prevent the harm that could otherwise arise from the conflict.

### **III. Conflicts of Interest**

The term “conflict of interest” denotes situations in which members of the University community are in a position to gain, or appear to gain, financial advantage or personal benefit (broadly construed) arising from their University positions, either through outside professional activities or through their research, administrative, or educational actions or decisions at the University. Sometimes these conflicts of interest can be managed, and sometimes they cannot be managed and must be avoided; regardless, conflicts of interest must always be recognized, disclosed, and appropriately addressed.

Because University Employees are also State employees, a conflict of interest may also arise in the context of State Ethics Law<sup>3</sup>, which, among other things, generally restricts the interests and relationships that a University Employee may have with any external entity that does or seeks to do business with the University. However, in recognition of the University’s role in promoting economic and technological development in the State, certain relationships or interests that would otherwise violate State Ethics Law (and/or University policies) may be permitted if they involve entities engaged in or having an interest in the outcome of research or development. In order to qualify for an exemption from the State Ethics Law, a relationship, interest or other activity must be disclosed, reviewed, and approved in accordance with the University’s Conflict of Interest and Conflict of Commitment Procedures<sup>4</sup>.

### **IV. Conflicts of Commitment**

The term “conflict of commitment” denotes situations that arise when outside professional activities or other significant commitments, whether outside or within the University, interfere with an Employee’s (faculty or staff) meeting his or her primary job responsibilities to the University.

For Faculty: As part of those responsibilities, full-time faculty at the rank of Assistant Professor, Associate Professor, and Professor ordinarily will be engaged regularly and effectively in undergraduate and graduate teaching and advising; will be engaged in high quality research,

---

<sup>3</sup> The conflict of interest provisions of Maryland State Ethics Law are codified in Maryland Code Annotated, General Provisions Article, Title 5, as amended from time to time. (*To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.*) 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 entities that have or are negotiating contracts or subcontracts with the University. Other employment relationships (including consulting) prohibited under State Ethics Law include those that could impair the impartiality or independent judgment of the Employee and those that involve an entity that is a party to a State contract (greater than \$1000) if the Employee’s duties include matters that substantially relate to the subject matter of the contract. State Ethics Law also contains other provisions that limit or prohibit State employees from participating in matters in which they (or certain family members or business entities) have an interest; soliciting and accepting gifts, including payment of travel and lodging expenses; using the prestige of their office or confidential information for private gain; and representing parties in State matters for contingent compensation.

<sup>4</sup> The State Ethics Law that exempts institutions of higher education from certain conflict of interest provisions so long as those institutions have conflict of interest policies in place is codified at Maryland Code Annotated, General Provisions Article, § 5-525(e). (*To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.*)

scholarship, and creative activity; and will be committed to service in the interests of the University, the profession, and the community. Therefore, the University generally expects that a faculty member in these ranks will spend a significant part of their time physically at, and actively involved in academic activities at, the University. The University may grant exceptions in particular cases as determined by agreement between the faculty member and their Unit Head. Part-time faculty and faculty in other ranks have prescribed domains of job responsibility. Professional activities outside their specific scopes of work should not interfere with their ability to meet their University responsibilities.

Faculty members are continually called upon to judge the quality of work of students, staff, and other faculty members (“Students and Colleagues”). Thus, a faculty member should not involve their Students and Colleagues in the faculty member’s external activities; such involvement may impact the faculty members’ judgment of their Students and Colleagues.

In summary, while the quality of a faculty member’s contributions may be enhanced by interaction with industry, business, government, and other institutions of our society, these interactions can also lead to conflicts of interest or conflicts of commitment. Therefore, the faculty member and their Unit Head must determine (a) the appropriate balance of University and external activities; and (b) whether it is appropriate to involve a faculty member’s Students and Colleagues in these external activities.

For Staff and Other Non-Faculty Employees: Corresponding cautions are relevant for University staff and other Employees. Staff members have prescribed domains of job responsibility, defined and evaluated through the formal performance review process. Outside activities beyond the Employee’s scope of work, whether professional service or personal consulting, should not interfere with the staff member’s ability to meet their job responsibilities.

## **V. Disclosure of Both Conflicts of Interest and Conflicts of Commitment**

**A. Methods of Disclosure.** University Employees are required to disclose actual, apparent or potential conflicts of interest or conflicts of commitment in three ways:

1. To their Unit Heads, as potential conflicts arise and preferably before participating in the activity;
2. For Employees who are faculty members or exempt staff, as part of the annual summary of such activities (e.g., the outside professional activities report [OPA]); and
3. As part of the proposal process for sponsored research awards. The Principal Investigator, Co-Investigator, and senior personnel (if required by the sponsor) must certify that no conflicts exist in the routing certification process and as required by the sponsor in sponsored research proposals.

Generally, further action is required only in cases where conflict—real, potential, or apparent—are identified through administrative review.

## **B. Disclosure and Consultation**

University Employees are required to keep their Unit Heads informed, in adequate detail, about all outside professional activities, service on external committees/boards, and other significant activities unrelated to their core University responsibilities. Employees are strongly encouraged to consult with their Unit Head prior to committing to an outside professional activity.

Furthermore, University Employees are required to discuss with their Unit Heads any assumption of new or expanded professional outside activities, including patent arrangements, before entering an agreement to undertake those activities. This is particularly true of external activities (e.g., direct and active management of outside business entities) that may conflict with the requirement that the primary loyalty of a full-time faculty member be, at all times, to the University; that may be incompatible with a faculty member's ability to meet the full range of their obligations to the University; or that may otherwise constitute conflicts of interest or conflicts of commitment.

Whenever there is reason to believe a relationship or situation may involve real, potential, or apparent conflicts of interest or commitment, University Employees and their Unit Heads are obliged to initiate the procedures outlined in Conflict of Interest and Conflict of Commitment Procedures that follow this policy. All conflicts of interest must be satisfactorily managed or eliminated prior to the University's expenditure of any funds under an award for any sponsored project affected by the conflict of interest.

### **C. Annual Report on Outside Professional Activities**

Each University Employee who is a faculty member or exempt staff must complete an Annual Report on Outside Professional Activities ("OPA"). The purpose of the annual OPA report is to maintain a continuing picture of such activities and to identify situations that could lead to potential or apparent conflicts of interest and/or commitment.

The OPA requires the following:

- Information about a University Employee's involvement with outside entities, including the relationship between the Employee and the company and a description of any financial interest or management responsibility the Employee has in the company. If a University Employee is providing consulting services to a company, the Employee is not required to disclose the amount or rate of compensation they receive from the company. The University Employee should avoid including any company-confidential information in the brief description of the nature of the work.
- Information about a University Employee's outside professional activities, whether compensated or not, including estimates of the Employee's amount of work performed and/or time commitment to the entity. Only those activities that are connected with the professional expertise of the individual are relevant, and only those need be included with one exception: All activities of the Employee involving a foreign government or foreign entity should be disclosed.

- A statement signed by the University Employee, attesting the Employee has read and understood this UMD Policy on Conflict of Interest and Conflict of Commitment and is in compliance with the policy. An Employee with a disclosed conflict of interest will be considered compliant with this Policy if the COI Committee determine a conflict did not exist or if the Employee is compliant with a conflict management plan approved by the COI Committee.

## **VI. Role of the Unit Head**

As stated above, 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 the University. Unit Heads are responsible for ensuring that members of the unit are familiar with University's policies and procedures regarding outside professional activities, conflicts of interest, and conflicts of commitment. The role of Unit Heads with regard to such matters further includes the following:

- The Unit Head, in consultation with the unit's faculty and with the approval of the Dean or next level administrator and the COI Committee, determines guidelines for what the unit considers to be a significant outside activity with the potential to give rise to conflicts that must be routinely disclosed and managed. The Unit Head must remain informed about the outside professional activities of members of the unit and must review the annual OPA for each unit Employee. The Unit Head is responsible for monitoring the level of outside activities for appropriateness relative to the mission of the unit and for compliance with this Policy and its related procedures.
- The Unit is knowledgeable about the types of activities that may lead to actual or apparent conflicts and, in consultation with the Dean's office and the COI Committee, advises unit Employees so that they may avoid conflicts of interest and commitment or similar situations that may adversely affect the University;
- The Unit Head seeks guidance from University administrators and/or the COI Committee when the Unit Head is unsure as to whether a conflict exists. The Unit Head ensures that unit Employees initiate a Conflict of Interest Disclosure when appropriate, and the Unit Head reviews the disclosure form. A University Employee should submit a Conflict of Interest Disclosure to the Unit Head whenever an Employee, Unit Head, Dean or other supervisor, or University administrator has reason to believe an activity, relationship, or other situation may involve a real, potential, or apparent conflict of interest in research or development as defined in the procedures that follow this policy.

## **VII. Additional Standards for Outside Professional Activities**

Outside professional activities are generally permitted as long as they do not result in conflicts of interest or conflicts of commitment. However, in accordance with Board of Regents and University policies, University Employees are expected to comply with the following additional standards relating to these outside professional activities.

- University Employees may not receive payment for consulting or professional service rendered within the University or to another University System of Maryland institution or State agency. Exceptions to this policy must be approved in advance, in writing, by the Unit Head and the University President. Payment for work on University contracts or grants will be approved only in unusual or exceptional circumstances. (Payment for teaching at University of Maryland Global Campus is allowed, however.)
- University Employees are permitted to use certain limited University resources in connection with consulting or other outside activities, but must notify their Unit Head whenever outside activities involve University resources beyond use of office space, University telephone, or University-issued computer. Use of University resources beyond office space, telephone, or computer is not permitted unless the Unit Head provides prior written consent, and the Employee makes prior arrangements to reimburse the University (including specification of costs and time frame) for use of the University's resources. University resources that require the Unit Head's prior written approval include but are not necessarily limited to laboratory space, University Employees, University students, and specialized University equipment.
- University Employees may not, in any way, claim or otherwise convey that the University endorses any recommendations or results of a University Employee's outside activities.
- University Employees may not enter into any agreement that conflicts with University or Board of Regents policies, including policies on intellectual property, without the written waiver or consent of the Chancellor and/or President, as appropriate.

### **VIII. Intellectual Property Licensing Revenue**

Statement of Principle: It is a conflict of interest for an Employee of the University (faculty, student, staff) to receive revenue on intellectual property on which they are the creator, co-creator, inventor or co-inventor, where the Employee also has a financial interest in a commercial entity that has licensed that intellectual property from the University.

In these situations, the University Employee who has a conflict of interest may choose one of the two following options or UM Ventures may provide additional options depending on the circumstances:

1. To accept the revenue payment from the University, and relinquish the position in the commercial entity (i.e., company, partnership, etc.); or
2. To forgo the revenue payment from the University and retain the position in the commercial enterprise.

University of Maryland, College Park Policy Concerning the Use of Self-Authored Course Materials. All orders of instructional materials that entail financial gain for the faculty member teaching the course must be approved by the chair of the department offering the course. When

the text is not in general use, special measures are in order. For example, choice of self-authored materials may be confirmed, or made, by a committee. Alternative texts may be authorized. Royalties may be assigned to third-party educational organizations, including the University of Maryland.



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

(Approved by the President May 20, 2003; Amended and approved on an interim basis by the President February 4, 2021, pending University Senate Action)

### **I. 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-1.11); the University of Maryland Policy on Conflict of Interest and Conflict of Commitment (II-3.10[A]); and the University of Maryland Policy and Procedures on Financial Conflicts of Interest in Public Health Funded Research (II-3.10[C]). 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 Law<sup>1</sup> and University policies. They are intended to guide officers and other Employees at the University of Maryland, College Park (“University”) 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.

These procedures do not apply to relationships of the President, Vice Presidents, 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.

---

<sup>1</sup> 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 entities that 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, including payment of travel and lodging expenses; 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 Maryland Code Annotated, General Provisions Article, Title 5, as amended from time to time. (To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.)

## II. Definitions

- A. Unit Head.** The term “Unit Head” typically means 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.** The term “Relationship” includes any interest, activity, service, employment, gift, or other benefit or relationship with an individual or entity not part of State government that would be prohibited by State Ethics Law if not disclosed and approved pursuant to UMD 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 State Ethics Law.
- 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.
- D. Employee.** The term “Employee” means all University personnel, including faculty, staff, and graduate research assistants except for the President, Vice Presidents, or similar officials designated by the Board of Regents.
- E. Significant University Resources.** The term “Significant University Resources” means gifts received by the University or an affiliated foundation or corporation, funds received by the University or an affiliated foundation or corporation under a contract or grant, direct or indirect support from other funds administered by the University or an affiliated foundation or corporation, assistance of Personnel or Students from outside one’s home department or unit; assistance of Personnel or Students in one’s home department or unit or specialists (e.g., graphic designers, instructional designers, multimedia and other specialists) beyond the level of support that is generally provided to Personnel in one’s home department or unit. In general, salary, office space, use of University Libraries, personal computers and facsimile machines that are customarily provided campus wide or are typically made available to all Personnel in one’s home department will not qualify as Significant University Resources.

## III. Disclosure Procedures

University Employees are required to disclose outside activities and potential conflicts of interest or commitment through three means, as expressed in the University’s Conflict of Interest and Conflict of Commitment Policy.

First, Employees must timely disclose in writing to their Unit Heads any professional activities they intend to undertake outside the University or outside the unit; disclosure is required whenever there is the potential for a conflict or the perception of a conflict. This disclosure

should be made before participating in the outside activity. This mechanism provides an opportunity to protect both the University and the Employee from adverse consequences that conflicts of interest or commitment can produce.

Second, Employees who are faculty or exempt staff must complete an Annual Report on Outside Professional Activities (“OPA”), which provides appropriate context in which the Unit Head can evaluate individual conflict issues and from which the University can gauge broader trends.

Third, during the proposal process for sponsored research grants and contracts, the Principal Investigator, Co-Investigator, or senior personnel (if required by sponsor) must certify that no conflicts exist in the routing certification process and/or disclose required information about commitments or conflicts and certify the proposal contents, as required by the sponsor, in sponsored research proposals.

The following sections describe how the University will resolve any concerns related to conflicts of interest or commitment; note that the procedures for conflicts of commitment are different than the procedures for conflicts of interest and may vary based on different types of conflicts.

#### **IV. Resolving Conflicts of Commitment**

Questions about potential conflicts of commitment (not conflicts of interest) will normally be resolved at the level of the Unit Head, who is best prepared to judge whether the outside activity may jeopardize the Employee’s ability to perform their University responsibilities. If the Unit Head is unable to resolve the conflict, the Unit Head should elevate the question to the next higher level of supervision for resolution.

#### **V. Mitigating Conflicts of Interest**

##### **A. Initial Determination by Unit Head**

Based upon an Employee’s written disclosure to the Unit Head of an intended outside professional activity or other possible conflicts of interest, the Unit Head typically will determine whether there are any concerns about possible conflicts of interest. If neither the Unit Head nor the Employee identify potential, real or apparent conflicts of interest, the Employee may not need to take further action. If the existence of a potential, real, or apparent conflict of interest is uncertain, Employees and Unit Heads may consult informally with appropriate administrators (e.g., the Conflicts of Interest (COI) Administrator, the Chair of the COI Committee, and/or the Office of General Counsel). Whenever there is reason to believe an activity, Relationship, or other situation may involve potential, real, or apparent conflicts of interest, the University must take appropriate action to resolve such conflicts, in accordance with the procedures below.

##### **B. Resolving Conflicts of Interest Not Involving Research or Development**

When a conflict of interest not involving Research or Development arises (e.g., having a financial interest in a business supply company that provides goods to the University), University policies and procedures do not apply, and the Employee must consult with the State Ethics Commission. The State Ethics Commission has the sole authority to interpret State Ethics Law outside of the Research and Development exception. At the request of

the Unit Head or State Ethics Commission, the Employee's consulting work or other activities may be suspended pending an opinion from the State Ethics Commission. Employees or a Unit Head may seek guidance about consulting with the State Ethics Commission from the University's Office of General Counsel.

## **C. Resolving Conflicts of Interest Involving Research or Development**

### **1. Activities Related to Research or Development**

In recognition of the University's role in promoting economic and technological development in the State, the Maryland General Assembly has authorized the University (under State law and BOR policy) to consider and approve certain Research or Development activities, notwithstanding State Ethics Law conflict of interest constraints.

Thus, certain Relationships that would otherwise violate conflict of interest provisions of State Ethics Law (and/or University policies) may be permitted under certain circumstances.<sup>2</sup> First, the Relationships must involve entities engaged in, or having an interest in the outcome of, Research or Development. Second, they must have been disclosed in writing, reviewed, and approved in accordance with University policy and the following procedures.

### **2. Conflict of Interest Form**

If the Unit Head, the potentially-conflicted Employee, or another University Employee expresses a concern, or if there is reason to believe that an activity, Relationship, or other situation may involve or appear to involve a conflict of interest in Research or Development, the potentially-conflicted individual(s) involved must submit a Conflict of Interest Disclosure Form ([https://research.umd.edu/sites/default/files/documents/coi/COI%20Disclosure%20Form%20101519\\_0.docx](https://research.umd.edu/sites/default/files/documents/coi/COI%20Disclosure%20Form%20101519_0.docx)). Additional information regarding the form and conflicts of interest can be found at <https://research.umd.edu/coi>. The Employee must submit a complete, signed disclosure form to the Unit Head and then to the Dean of the College/School, who each review and sign the form before forwarding to the President's Advisory Committee on Conflict of Interest ("COI Committee"), a group composed of University faculty and administrators that report to the Vice President for Research.

Please note that submitting a disclosure form is in the best interests of the Employee concerned, as well as the University. In an era of increasing levels of outside professional activity and interaction with non-University entities, complicated situations can arise with regard to possible conflicts of interest. In some cases, review

---

<sup>2</sup> The State Ethics Law that exempts institutions of higher education from certain conflict of interest provisions is codified at §15-523 of the State Government Article of the Annotated Code of Maryland. Maryland Code Annotated, General Provisions Article, § 5-525(e). (To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.)

of a disclosure form by the Conflict of Interest Committee may serve to guide and protect the Employee while they pursue outside interactions and Relationships.

If an activity or Relationship has been approved by the University's Conflict of Interest Committee, the Employee must timely submit a follow-up report whenever circumstances concerning the activity or Relationship change in a manner that impacts the earlier disclosure. The University will request annual confirmation of any activity or Relationship that remains in place from year to year.

### **3. Review**

#### **a. General Background**

After the disclosure form is submitted, the COI review and evaluation process may require additional involvement of the Employee(s) whose activities are being assessed. The Employee may be asked to provide further information to clarify the situation or may be asked to assist the University in exploring avenues to manage the conflict.

The COI evaluation process culminates in a written recommendation from the COI Committee, which may determine that (1) no conflict exists, (2) a conflict exists but can be managed via a proscribed management plan, or (3) a conflict exists and cannot be managed. The final approval of a waiver is made by the President. Copies of approvals and supporting documentation are forwarded by the University to the State Ethics Commission.

Because the University expects its Employees to disclose new outside professional activity or Relationship before commencing the activity, it is important that the disclosure be made in a timely fashion to allow sufficient time for consideration by the Unit Head and, if necessary, the COI Committee and the President. The University also expects the Unit Head and the COI Committee to provide timely feedback and action so as not unreasonably delay action by the Employee in pursuing the new outside activity.

#### **b. Unit Heads**

Unit heads are responsible for conducting the initial review of the disclosure forms submitted by Employees within their unit. As part of that initial review, a Unit Head should review the proposed conflict management plan, which should include any mechanisms that the Unit Head deemed appropriate for managing, reducing, or eliminating potential, real, or apparent conflicts of interest.

The Unit Head shall sign and forward the disclosure form and proposed management plan to the appropriate dean for review and signature and then to the Conflict of Interest Administrator (COI Administrator). The COI Administrator is appointed by the Vice President for Research.

#### **c. President's Advisory Committee on Conflict of Interest**

The COI Administrator or their designee shall forward the disclosure documents for consideration to the COI Committee. The COI Committee shall have at least nine voting members: seven faculty members appointed by the President, one of whom shall be appointed by the President to Chair the COI Committee; the Director of UM Ventures, College Park, and the Director, Office of Research Administration. Additional members may include individuals with relevant expertise affiliated or unaffiliated with the University.

The COI Committee may require the disclosing Employee to provide further information, and the COI Committee is encouraged to seek information, advice and input from appropriate University personnel, including Unit Heads, deans, the University Office of General Counsel, and the conflicted or potentially-conflicted Employee(s). 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 as well as with individuals unaffiliated with the University.

#### **4. Recommendation by the COI Committee**

The COI Committee shall review the disclosure form and accompanying documents and recommend to the President whether the University should approve the disclosed Relationship. The COI Committee may not recommend approval of any Relationship that would:

- give improper advantage to the outside entity with whom the Employee has a Relationship;
- lead to misuse of University students or Employees for the benefit of such outside entities;
- otherwise interfere with the University duties and responsibilities of the Employee maintaining a Relationship with the outside entity;
- be so influential as to impair impartiality in conducting research, interpreting research results, or determining research or other professional and employment priorities;
- present an unmanageable or otherwise unacceptable conflict of interest or the appearance of an unmanageable or otherwise unacceptable conflict of interest; or
- otherwise violate state or federal laws, regulations, policies, or procedures, or create a situation that is not in the best interests of the University.

A recommendation for approval indicates the COI 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 indicates the Committee's conclusion that a conflict of interest exists that cannot be properly managed, and that the Employee 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.

## **5. 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 Employee(s), Unit Heads and deans or similar officials involved. Among other things, any notice of approval should inform Employees of their continuing obligations to:

- comply with any approved management plan;
- 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; and
- continue to adhere to all University policies and procedures, including those concerning conflicts of commitment and professional commitment of faculty.

The President may withdraw approval if an employee misrepresented the nature of a Relationship, activity, interest in an entity, or other situation, or fails to comply with any management plan or any other conditions or restrictions on approval, 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.

## **6. External Reporting Procedures and Record Retention**

The COI Administrator shall submit quarterly reports of all approvals granted under these procedures 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, the University shall file with the State Ethics Commission copies of all disclosure forms submitted in connection with Research and Development Relationships. The University, through the COI Administrator, will develop and maintain a file, available for public review, that will contain all such approved Relationships with applicable disclosure forms.

The COI Administrator is responsible for providing written notice, as appropriate, to the awarding agency in those cases involving sponsored projects. Information regarding all conflicts of interest identified by UMD will be made available to sponsors upon request, as required by agency regulations or other sponsor

requirements. Conflicts that cannot be satisfactorily resolved must be disclosed to as required by agency regulations. In the case of Public Health Service (“PHS”) awards, or any awards where the agency so requires, the University must give notice to the agency for all conflicts of interest.

The COI Administrator will maintain records of all conflicts of interest 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.

## **VI. Effect of Non-Compliance**

### **A. In General**

Non-compliance with the University’s Conflict of Interest and Conflict of Commitment policy or these procedures may be a violation of State Ethics Law and may result in disciplinary action and/or other sanctions in accordance with University policies, State Ethics Law, or other applicable State or federal laws and regulations.

Failure to properly disclose outside professional activities when required on sponsored research proposals funded by the U.S. government could also result in a violation of U.S. federal law.

### **B. Additional Considerations for Conflicts of Interest in Research or Development**

All identified conflicts of interest must be satisfactorily managed, reduced or eliminated prior to the University’s expenditure of any funds under an award for any sponsored project. In addition to disciplinary action and/or other sanctions, non-compliance with the conflicts 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 Employees with respect to future proposal submissions.

Non-compliance, or questions and/or concerns about possible non-compliance, in connection with any conflict of interest in research or development should be reported in writing to the Associate Vice President for Research Administration, who will review the report and confer with other University personnel, including the Chair of the COI Committee, as needed, to determine whether further action is warranted including, but not limited to, referring the matter to a Compliance Subcommittee of the COI Committee (consisting of the Chair and two designees of the Chair) and/or invoking other University policies and procedures and implementing sponsor requirements, as appropriate.

If the failure of an investigator to comply with conflict of interest policies or procedures has biased the design, conduct, or reporting of funded research, the University must promptly notify the sponsoring agency of the corrective action taken or to be taken. The sponsoring agency will consider the situation and may take further action, which may include directions to the University on how to maintain appropriate objectivity in the funded project.

# REVISIONS TO THE CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT POLICY

MODS DRAFT 12/9/2020

## II-3.10(A) UNIVERSITY OF MARYLAND POLICY ON CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT

### 1. Purpose

The mission of the University of Maryland, College Park (“University”) includes advancement of knowledge, support of the scholarly professions, and active participation in the cultural, technological, commercial, public policy, and social life of our communities. This mission is advanced when members of the University forge links outside the University as scholars, artists, consultants, participants in research and development ventures, advisors to government entities, and in other capacities that relate to their professional expertise. The University has strongly encouraged the development of such links in the past and will continue to do so in the future. The University recognizes, however, that these very positive interactions create the occasion for real, potential, or apparent conflicts of interest and commitment, any of which may result in legal or reputational harm to the individual and/or the ~~institution~~ University.

The intent of this policy is, in part, to provide guidance that will enable these extra-university liaisons to continue while avoiding situations that harm the individual and/or the University through ~~real or perceived the reality or perception of~~ ethical, legal, or financial conflicts. Although such conflicts ~~may~~ arise most often in connection ~~when University personnel, including faculty, staff, and graduate research assistants (each an “Employee” and together “Employees”)Employee engage in activities outside the University, this policy and procedures applies to all activities of Employees. with outside activities, the policy and the procedures relating to them apply to any Employee of the institution.~~

This Conflict of Interest and Conflict of Commitment Policy implements Board of Regents’ policies on Professional Commitment of Faculty (II-3.10) and Conflicts of Interest in Research or Development (III-1.11). This policy is required by State Ethics Law<sup>1</sup> and ~~failure to comply with a violation of~~ this Policy ~~is~~ ~~may be~~ a violation of State law.

### 2. Overview

~~This policy applies to all University Employees.~~ The University is ~~is~~ concerned with two broad kinds of conflict:

- (a) **Conflicts of interest (“COI”)**, which typically involve potential financial gain or personal benefit to an Employee or related individuals or entities; and
- (b) **Conflicts of commitment**, which typically arise when otherwise ~~positive acceptable outside~~ activities compromise the fulfillment of an Employee’s basic job responsibilities to the University.

The University ~~of Maryland~~ requires that its officers and Employees acting on the ~~institution~~ University’s behalf disclose actual or potential ethical, legal, financial, or other conflicts of interest and commitment. Further, working with supervisors and ~~institutional management~~ University leadership, either these Employees must find a means to resolve or to manage<sup>2</sup> any conflicts, or they must not participate in the activities that give rise to the conflicts.

---

<sup>1</sup> See Maryland Code Annotated, General Provisions Article, § 5-525.

<sup>2</sup> To “manage” a conflict means to set procedures in place that will serve to prevent the harm that could otherwise arise from the conflict.

Situations where such conflicts arise can be sufficiently complex that opinions differ as to whether conflicts actually exist, are likely to arise, or appear to exist. Accordingly, the University emphasizes two elements essential to the effective implementation of this policy:

- (1) **Full and prompt disclosure by the Employee** to an appropriate supervisor and, if a conflict of interest, to the COI Committee, of activities and interests outside the ~~Institution~~University or outside the unit. This disclosure enables potential conflicts to be reviewed, and, if appropriate, properly managed ~~to the benefit of all parties concerned~~; and
- (2) **Availability of University guidance** to Employees and to supervisors, through which the University provides continuing and relevant ~~guidance~~ advice and clarification where the existence of a conflict of interest is uncertain, or where a conflict of interest— real, potential, or apparent — must be managed.

Personal responsibility, integrity, and high ethical standards are the principal factors in avoiding conflicts of interest, and the University expects that all of its officers and Employees (~~e.g., faculty, staff, graduate research assistants~~) will conduct their activities in a manner that reflects credit positively on themselves, their professions, and the University without need for specific criteria or rules of conduct.

Some situations, however, involve unique knowledge and understanding or are sufficiently complex that judgments may differ on whether or not there is a conflict of interest and/or conflict of commitment. Individuals of the highest integrity may, therefore, unknowingly place themselves in situations where real or perceived conflicts of interest exist. Liaison between the ~~u~~Unit ~~H~~Head (typically defined as 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 see the definition of “Unit Head” in paragraphs 5 and 6, below) and Employees is the principal means of communication and disclosure in matters involving professional activities and is the principal means by which conflicts of commitment should be addressed and resolved; conflicts of interest require disclosure to both the Unit Head and COI Committee.

~~Clearly, outright De~~ Dishonesty is a very serious matter that cannot be condoned and will be dealt with promptly in the following or related circumstances: stealing; lying about matters connected with work; falsifying records; making unauthorized personal use of institutional University or government property; doing unauthorized private work on University time; and giving or receiving a bribe in any form. Such dishonesty is grounds for serious disciplinary action, up to and including termination of employment.

### 3. Conflicts of Interest

The term “conflicts of interest” denotes situations in which members of the University community are in a position to gain, or appear to gain, financial advantage or personal benefit (broadly construed) arising from their University positions, either through outside professional activities or through their research, administrative, or educational actions or decisions at the University. Sometimes these conflicts of interest can be managed, and sometimes they cannot be managed and must be avoided; regardless, conflicts of interest must always be recognized, disclosed, and appropriately addressed.

Because University Employees are also State employees, a conflict of interest may also arise in the context of State Ethics Law<sup>3</sup>, which, among other things, generally restricts the interests and relationships

---

<sup>3</sup> The conflict of interest provisions of Maryland State Ethics Law are codified in Maryland Code Annotated, General Provisions Article, Title 5, as amended from time to time. (*To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>*). 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 entities that have or are negotiating contracts or subcontracts with the University. Other employment relationships (including consulting) prohibited under State Ethics Law include those that could impair the impartiality or independent judgment of the Employee and those that involve an entity that is a party to a State contract (greater than \$1000) if the Employee’s duties include matters that substantially relate to the subject matter of the contract. State Ethics Law also contains other provisions that limit or prohibit State employees from participating in matters in which they (or certain family members or business entities) have an interest; soliciting and accepting gifts, including payment of travel and lodging expenses; using the prestige of their office or confidential information for private gain; and representing parties in State matters for contingent compensation.

that a University Employee may have with any external entity that does or seeks to do business with the University. However, in recognition of the University's role in promoting economic and technological development in the State, certain relationships or interests that would otherwise violate State Ethics Law (and/or University or federal policies) may be permitted if they involve entities engaged in or having an interest in the outcome of research or development. In order to qualify for an exemption from the State Ethics Law, a relationship, interest, or other activity must be disclosed, reviewed, and approved in accordance with the University's Conflict of Interest and Conflict of Commitment Procedures.<sup>4</sup>

#### 4. Conflicts of Commitment

The term "conflicts of commitment" denotes situations that arise when outside professional activities or other significant commitments, whether outside or within the University, interfere with an Employee's (faculty or staff) fulfilling their primary job responsibilities to the University.

For Faculty: As part of those responsibilities, full-time faculty at the rank of Assistant Professor, Associate Professor, and Professor ordinarily will be engaged regularly and effectively in undergraduate and graduate teaching and advising; will be engaged in high quality research, scholarship, and creative activity; and will be committed to service in the interests of the University, the profession, and the community. Therefore, the University generally expects that a faculty member in these ranks will spend a significant part of their time physically at, and actively involved in academic activities at, the University. The University may grant exceptions in particular cases as determined by agreement between the faculty member and their Unit Head (~~see the definition of "unit head" in paragraphs 5 and 6, below~~). Part-time faculty and faculty in other ranks have prescribed domains of job responsibility. Professional activities outside their specific scopes of work should not interfere with their ability to meet their University responsibilities.

Faculty members are continually called upon to judge the quality of work of students, staff, and other faculty members ("Students and Colleagues"). Thus, a faculty member should not involve their Students and Colleagues in the faculty member's external activities; such involvement may impact the faculty member's judgment of their Students and Colleagues.

In summary, while the quality of a faculty member's contributions may be enhanced by interaction with industry, business, government, and other institutions of our society, these interactions can also lead to conflicts of interest or conflicts of commitment. Therefore, the faculty member and their Unit Head must determine (a) the appropriate balance of University and external activities, and (b) whether it is appropriate to involve a faculty member's Students and Colleagues in these external activities.

For Staff and Other Non-Faculty Employees: Corresponding cautions are relevant for University staff and other Employees. Staff members have prescribed domains of job responsibility, defined and evaluated through the formal performance review process. Outside activities beyond the Employee's scope of work, whether professional service or personal consulting, should not interfere with the staff member's ability to meet their job responsibilities.

#### 5. Disclosure of Both Conflicts of Interest and Conflicts of Commitment

(a) Methods of Disclosure. University Employees are required to ~~for~~ disclose actual, apparent, or potential conflicts of interest or conflicts of commitment in three ways:

- (1) To their Unit Heads, as potential conflicts arise and preferably before commencing a commitment to participate in the activity;
- (2) For Employees who are faculty members or exempt staff, As part of the annual summary of such activities (e.g., the outside professional activities report (OPA)); and

---

<sup>4</sup> The State Ethics Law that exempts institutions of higher education from certain conflict of interest provisions so long as those institutions have conflict of interest policies in place is codified at Maryland Code Annotated, General Provisions Article, § 5-525(e). (To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.)

- (3) As part of the proposal process for sponsored research awards. ~~A~~The Principal Investigator, ~~Co-~~Investigator, and senior personnel (if required by sponsor) must certify that no conflicts exist in the routing certification process and as required by the sponsor in sponsored research proposals.

Generally, further action is required only in cases where conflicts—real, potential, or apparent—are identified by ~~through administrative review, the unit head or the Employee involved. 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)a. Disclosure and Consultation**

University Employees are required to keep their Unit Heads informed, in adequate detail, about all outside professional activities, service on external committees/boards, and other special assignments significant external activities. Employees are strongly encouraged to consult with their Unit Head prior to committing to an outside professional activity. ~~Guidelines for what constitutes “significant” activities will differ among units and will be determined by the Unit Head, in consultation with the unit’s faculty and with the approval of the Dean or next level administrator.~~

Furthermore, University Employees are required to discuss with their Unit Heads any assumption of new or expanded professional activities, including patent arrangements, before entering an agreement to undertake those activities. This is particularly true of external activities (e.g., direct and active management of outside business entities) that may conflict with the requirement that the primary loyalty of a full-time faculty member be, at all times, to the University; that may be incompatible with a faculty member's ability to meet the full range of their obligations to the University; or that may otherwise constitute conflicts of interest or conflicts of commitment.

Whenever there is reason to believe a relationship or situation may involve real, potential, or apparent conflicts of interest or commitment, University Employees and their Unit Heads are obliged to initiate the procedures outlined in Conflict of Interest and Conflict of Commitment Procedures that follow this policy. All conflicts of interest must be satisfactorily managed or eliminated prior to the University's expenditure of any funds under an award for any sponsored project affected by the conflict of interest.

#### **(c) b. Annual Report on Outside Professional Activities**

Each University Employee who is a faculty member or exempt staff must complete an Annual Report on Outside Professional Activities (“OPA”). ~~This is in place of the semi-annual consulting report previously required for faculty and exempt staff.~~ The purpose of the annual OPA report is to maintain a continuing picture of such activities and to identify situations that could lead to potential or apparent conflicts of interest and/or commitment.

The OPA requires the following:

- Information about a University Employee's involvement with outside companies, entities including the relationship between the Employee and the company and a description of any financial interest or management responsibility the Employee has in the company. (If a University Employee is providing consulting services to a company, the Employee is not required to disclose the amount or rate of compensation they receive from the company. The University Employee should avoid including any company-confidential information in the brief description of the nature of the work.
- Information about a University Employee's outside professional activities, whether compensated or not, including estimates of the Employee's amount of work performed and/or time commitment to the company/entity. Only those activities that are connected with the professional expertise of the individual are relevant, and only those need be included with one exception: All activities of the Employee involving a foreign government or foreign entity should be disclosed.
- A statement signed by the University Employee, attesting ~~to the fact~~ that the Employee has read and understood this UMD Policy on Conflict of Interest and Conflict of Commitment and is in compliance with the policy. An Employee with a disclosed conflict of interest will be considered compliant with this Policy if the COI Committee determined a conflict did not exist or if the Employee is compliant with a conflict management plan approved by the COI Committee.

## 6. Role of the Unit Head

As stated above, 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 the University. Unit Heads are responsible for ensuring that members of the unit are familiar with the University's policies and procedures regarding outside professional activities, conflicts of interest, and conflicts of commitment. The role of Unit Heads with regard to such matters further includes the following:

- The Unit Head, in consultation with the unit's faculty and with the approval of the Dean or next level administrator and the COI Committee, determines guidelines for what the unit considers to be a significant outside activity with the potential to give rise to conflicts that must be routinely disclosed and managed. The Unit Head must remain informed about the outside professional activities of members of the unit and must review the annual OPAs for each unit Employee. The Unit Head is responsible for monitoring the level of outside activities for appropriateness relative to the mission of the unit and for compliance with this Policy and its related procedures.
- The Unit Head is knowledgeable about the types of activities that may lead to actual or apparent conflicts and, in consultation with the Dean's office and the COI Committee, advises unit Employees so that they may avoid conflicts of interest and commitment or similar situations that may adversely affect the University;
- The Unit Head seeks guidance from University administrators and/or the COI Committee when the Unit Head is unsure as to whether a conflict exists. The Unit Head ensures that unit Employees initiate a Conflict of Interest Disclosure when appropriate, and the Unit Head reviews the disclosure form. A University Employee should submit a Conflict of Interest Disclosure to the Unit Head whenever an Employee, Unit Head, Dean or other supervisor, or University administrator has reason to believe an activity, relationship, or other situation may involve a real, potential, or apparent conflict of interest in research or development as defined in the procedures that follow this policy.

## 7. Additional Standards for Outside Professional Activities

Outside professional activities are generally permitted as long as they do not result in conflicts of interest or conflicts of commitment. However, in accordance with Board of Regents and University policies, University Employees are expected to comply with the following additional standards relating to these outside professional activities.

- University Employees may not receive payment for consulting or professional service rendered within the University or to another University System [of Maryland](#) institution or State [agency](#). Exceptions to this policy must be approved in advance, in writing, by the Unit Head and the University President. Payment for work on University contracts or grants will be approved only in unusual or exceptional circumstances. (Payment for teaching at University of Maryland Global Campus is allowed, however.)
- University Employees are permitted to use certain limited University resources in connection with consulting or other outside activities but must notify their Unit Head whenever outside activities involve University resources beyond use of office space, University telephone, or University-issued computer. Use of University resources beyond office space, telephone, and computer is not permitted unless the Unit Head provides prior written consent and the Employee makes prior arrangements to reimburse the University (including specification of costs and time frame) for use of the University's resources. University resources that require the Unit Head's prior written approval include but are not necessarily limited to laboratory space, University Employees, University students, and specialized University equipment.
- University Employees may not, in any way, claim or otherwise convey that the University endorses any recommendations or results of a University Employee's outside activities.
- University Employees may not enter into any agreement that conflicts with University or Board of Regents policies, including policies on intellectual property, without the written waiver or consent of the Chancellor and/or President, as appropriate.

## 8. Intellectual Property Licensing Revenue

Statement of Principle: It is a conflict of interest for an Employee of the University (faculty, student, staff) to receive revenue on intellectual property on which they are the creator, co-creator, inventor or co-inventor, where the Employee also has a financial interest in a commercial entity that has licensed that intellectual property from the University.

In these situations, the University Employee who has a conflict of interest may choose one of two options:

- (a) To accept the revenue payment from the University, and relinquish the position in the commercial entity (i.e., company, partnership, etc.); or
- (b) To forgo the revenue payment from the University and retain the position in the commercial enterprise.

~~In the latter case, if there are co-inventors of the intellectual property who do not have a conflict of interest, the royalty payment from the University will be distributed among the other co-inventors as dictated by the royalty distribution requirements.~~

[University of Maryland, College Park Policy Concerning the Use of Self-Authored Course Materials](#). All orders of instructional materials that entail financial gain for the faculty member teaching the course must be approved by the chair of the department offering the course. When the text is not in general use, special measures are in order. For example, choice of self-authored materials may be confirmed, or made, by a committee. Alternative texts may be authorized. Royalties may be assigned to third-party educational organizations, including the University of Maryland.

## ~~9. Role of the President's Advisory Committee on Conflicts of Interest.~~

# REVISIONS TO THE CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT PROCEDURES

MODS DRAFT 12/9/2020

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

### 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); the University of Maryland Policy on Conflict of Interest and Conflict of Commitment (II-3.10(A); and the University of Maryland Policy on Financial Conflict of Interest (II-3.10(C)). 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 Law<sup>1</sup> and University policies. They are intended to guide officers, ~~faculty, staff, and other~~ Employees at the University of Maryland, College Park (“University”) 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. These procedures are required by State Ethics Law, and a violation of these procedures is a violation of State law.

These procedures do not apply to relationships of the President, Vice Presidents, 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.

### 2. DEFINITIONS

~~(a): Unit Head. The role of the Unit Head is pivotal in these procedures. For the purposes of this document, the term “Unit Head” typically means is normally~~ the chair or director in an academic

---

<sup>1</sup> 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 entities that 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, including payment of travel and lodging expenses; 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 Maryland Code Annotated, General Provisions Article, Title 5, as amended from time to time. (To find this online, go to <http://www.lexisnexis.com/hottopics/mdcode/>.)

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 between a University Employee and other individuals or entities. As used herein, the~~ The term “relationship” includes any interest, activity, service, employment, gift, or other benefit or relationship with an individual or entity not part of State government that would be prohibited by State Ethics Law if not disclosed and approved pursuant to UMD 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 of UMD is included if it would create restrictions on the officer or Employee under the conflicts of interest provisions of ~~State~~the Ethics Law.

**(c) Research or Development.** ~~State Ethics Law permits the University to provide special treatment for activities associated with research or development. As used herein, the~~ 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.

**(d) Employee.** The term “Employee” means all University personnel, including faculty, staff, and graduate research assistants except for the President, a Vice Presidents, or similar officials designated by the Board of Regents.

**(e) Significant University Resources.** The term “Significant University Resources” means gifts received by the University or an affiliated foundation or corporation, funds received by the University or an affiliated foundation or corporation under a contract or grant, direct or indirect support from other funds administered by the University or an affiliated foundation or corporation, assistance of Personnel or Students from outside one’s home department or unit; assistance of Personnel or Students in one’s home department or unit or specialists (e.g., graphic designers, instructional designers, multimedia and other specialists) beyond the level of support that is generally provided to Personnel in one’s home department or unit. In general, salary, office space, use of University Libraries, personal computers and facsimile machines that are customarily provided campus wide or are typically made available to all Personnel in one’s home department will not qualify as Significant University Resources.

### **3. DISCLOSURE PROCEDURES**

University Employees are required to disclose outside activities and potential conflicts of interest or commitment through three means, as expressed in the University’s Conflict of Interest and Conflict of Commitment Policy.

First, Employees must timely disclose in writing to their Unit Heads ~~(see Definition 2.a above)~~ any ~~commitment to~~ professional activities they intend to ~~be~~ undertake outside the University or outside the unit; disclosure is required whenever there is the potential for a conflicts or the perception of a conflicts ~~may occur~~. This disclosure should be made before ~~any such commitment is finalized~~ participating in the outside activity. This mechanism provides an opportunity to protect both the University and the ~~individual~~ Employee from adverse consequences that conflicts of interest or commitment can produce. ~~.\_~~

Second, Employees who are faculty ~~and/or~~ exempt staff must complete an Annual Report on Outside Professional Activities (“OPA”), which provides appropriate context in which the Unit Head can evaluate individual conflict issues and from which the University can gauge broader trends.

Third, during the proposal process for sponsored research grants and contracts, a the Principal Investigator, Co-Investigator, or senior personnel (if required by sponsor) must certify that no conflicts exist in the routing certification process and/or disclose required information about commitments or conflicts and certify the proposal contents, as required by the sponsor, in sponsored research proposals.

The following sections describe how the University will resolve any concerns related to conflicts of interest or commitment; note that the procedures for conflicts of commitment are different than the procedures for conflicts of interest and may vary based on different types of conflicts of interest.

#### **4. RESOLVING CONFLICTS OF COMMITMENT**

Questions about potential conflicts of commitment (~~not conflicts of interest~~) will normally be resolved at the level of the Unit Head, who is best prepared to judge whether the ~~outside activity may jeopardize the~~ Employee's ~~ability to perform~~ ~~commitment to~~ their University responsibilities ~~is in jeopardy~~. If the Unit Head is unable to resolve the conflict, the Unit Head should elevate the question to the next higher level of supervision ~~for resolution~~.

#### **5. MITIGATING CONFLICTS OF INTEREST**

##### **~~(a)~~ Initial Determination by Unit Head**

Based upon an Employee's ~~written~~ disclosure to the Unit Head of an intended outside professional activity or other possible conflicts ~~s of interest~~, the Unit Head typically will determine whether there are any concerns about possible conflicts of interest. If neither the Unit Head nor the Employee identify potential, real, or apparent conflicts of interest, the Employee may not need to take any further action. If the existence of a potential, real, or apparent conflict of interest is uncertain, Employees and Unit Heads may consult informally with appropriate administrators (e.g., the Conflicts of Interest (COI) Administrator (see section ~~5(c)(iii)(b)-e.iii-(b)~~, below), the Chair of the COI Committee (see section ~~5-(c)-(ii)~~, below), and/or the Office of General Counsel). Whenever there is reason to believe an activity, relationship, or other situation may involve real, apparent, or potential conflicts of interest, ~~the University must take~~ appropriate action to resolve such conflicts ~~is to be initiated depending on the nature of the conflict~~, in accordance with the procedures below.

##### **~~(b)~~ Resolving Conflicts of Interest NOT Involving Research or Development**

###### ~~i. Conflicts of Interest under State Ethics Law~~

When a conflict of interest *not* involving research or development arises (e.g., ~~having a financial interest a business supply company that provides goods to the University~~ ~~xxconsulting for a non-University entity, etc.~~), University policies and procedures do not apply, and the Employee must consult with the State Ethics Commission. The State Ethics Commission has the sole authority to interpret State Ethics Law outside of the research and development exception. At the request of the Unit Head or State Ethics Commission, the Employee's consulting work or other activities may be suspended pending an opinion from the State Ethics Commission. Employees or a Unit Head may seek guidance about consulting with the State Ethics Commission from the University's Office of General Counsel.

###### ~~ii. 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. At the request of the Unit Head or a higher level supervisor, the matter may be referred to the President's Advisory Committee on Conflict of Interest (see section 5.e.ii., of. seq, below) for review and recommendation.~~

##### **~~(c)~~ Resolving Conflicts of Interest Involving Research or Development**

###### **~~(i)~~ Activities Related to Research or Development**

In recognition of the University's role in promoting economic and technological development in the State, the Maryland General Assembly has authorized the University (under State law and BOR policy) to consider and approve certain research or development activities, notwithstanding State Ethics Law conflict of interest constraints.

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.<sup>2</sup> First, the relationships 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~~disclosed in writing, reviewed, and approved in accordance with University policy and 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.~~

### **~~(ii)~~ Conflict of Interest Form**

If the Unit Head, the potentially-conflicted Employee, or another University Employee expresses a concern, or if there is reason to believe that an activity, relationship, or other situation may involve or appear to involve a conflict of interest in research or development, the potentially-conflicted individual(s) involved must ~~complete~~ submit a Conflict of Interest Disclosure Form. Additional information regarding the form and conflicts of interest can be found at <https://research.umd.edu/coi>. The Employee ~~it~~ must submit a complete, signed disclosure form to the Unit Head and then to the Dean of the College/unit, who each review and sign the form before forwarding to the President's Advisory Committee on Conflict of Interest ("COI Committee"), a group composed of University faculty and administrators ~~who~~ that reports to the Vice President for Research.

Please note that submitting a disclosure form is in the best interests of the Employee concerned as well as the University. In an era of increasing levels of outside professional activity and interaction with ~~industry~~non-University entities, complicated situations can arise with regard to possible conflicts of interest. In some cases, review of a disclosure form by the Conflict of Interest Committee may serve to guide and protect the ~~individual~~ Employee while they pursue outside interactions and relationships.

If an activity or relationship has been approved by the University's Conflict of Interest Committee, the Employee must timely submit a follow-up report whenever circumstances concerning the activity or relationship change in a manner that impacts the earlier disclosure. The University will request annual confirmation of any activity or relationship that remains in place from year to year.

### **~~(iii)~~ Review**

#### **(a) General Background**

After the disclosure form is submitted, the COI review and evaluation process may require additional involvement of the Employee(s) whose activities are being assessed. The Employee may be asked to provide ~~further information~~ to clarify the situation or may be asked to assist the University in exploring avenues to manage the conflict.

The COI evaluation process culminates in a written recommendation from the COI Committee, which may determine that (1) no conflict exists, (2) a conflict exists but can be managed via a proscribed management plan, or (3) a conflict exists and cannot be managed. The final approval of a waiver is made by the President. Copies of approvals and supporting documentation are forwarded by the University to the State Ethics Commission.

Because the University expects its Employees to disclose a ~~significant~~ new outside professional activity or relationship before commencing the activity, it is important that the disclosure be made in a timely fashion to allow sufficient time for consideration by the Unit Head and, if necessary,

---

<sup>2</sup> The State Ethics Law that exempts institutions of higher education from certain conflict of interest provisions is codified at §15-523 of the State Government Article of the Annotated Code of Maryland. Maryland Code Annotated, General Provisions Article, § 5-525(e). (To find this online, go to <http://www.lexisnexus.com/hottopics/mdcode/>.)

the COI Committee and the President. The University also expects the Unit Head and the COI Committee to provide timely feedback and action so as not to unreasonably delay action by the Employee in pursuing the new outside activity.

(b) Unit Heads

Unit Heads are responsible for conducting the initial review of the disclosure forms submitted by Employees within their unit. As part of that initial review, a Unit Head should review the proposed conflict management plan, which should include any mechanisms that the Unit Head deemed appropriate for managing, reducing, or eliminating real, apparent, or potential conflicts of interest.

The Unit Head shall sign and forward the disclosure form and proposed management plan to the appropriate dean for review and signature and then to the Conflict of Interest Administrator (COI Administrator). The COI Administrator is appointed by the Vice President for Research.

(c) President's Advisory Committee on Conflict of Interest

The COI Administrator or their designee shall forward the disclosure documents for consideration to the COI Committee. The COI Committee shall have at least nine voting members: seven faculty members appointed by the President, one of whom shall be appointed by the President to Chair the COI Committee; the Director of UM Ventures, College Park, and the Director, Office of Research Administration. Additional members may include individuals with relevant expertise affiliated or unaffiliated with the University.

The COI Committee may require the disclosing Employee to provide further information, and the COI Committee is encouraged to seek information, advice, and input from appropriate University personnel, including Unit Heads, deans, the University Office of General Counsel, and the conflicted or potentially conflicted Employee(s). 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 as well as with individuals unaffiliated with the University.

***(iv)-Recommendation by the COI Committee***

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

- give improper advantage to the outside entity with whom the Employee has a relationship;
- lead to misuse of University students or Employees for the benefit of such outside entities;
- otherwise interfere with the University duties and responsibilities of the Employee maintaining a relationship with the outside entity;
- be so influential as to impair impartiality in conducting research, interpreting research results, or determining research or other professional and employment priorities;
- allow the Employee to authorize or otherwise direct funding to an outside entity;
- present an unacceptable-unmanageable or otherwise unacceptable conflict of interest or the appearance of an unmanageable or otherwise unacceptable conflict of interest; or
- otherwise violate state or federal laws, regulations, policies, or procedures, or create a situation that is not in the best interests of the University.

A recommendation for approval indicates the COI 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 indicates the Committee's conclusion that a conflict of interest exists that cannot be properly managed, and that the Employee 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 Employee(s), Unit Heads, and deans or similar officials involved. Among other things, any notice of approval should inform Employees of their continuing obligations to:

- comply with any approved management plan;
- 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~~ all University policies and procedures, including those concerning conflicts of commitment and professional commitment of faculty.

The President may withdraw approval if an Employee misrepresented the nature of a relationship, activity, interest in an entity, or other situation, or fails to comply with any management plan or any other conditions or restrictions on approval, 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.

**~~(vi)~~iv- External Reporting Procedures and Record Retention**

The COI Administrator shall submit quarterly reports of all approvals granted under these procedures 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, the University shall file with the State Ethics Commission copies of all disclosure forms submitted in connection with research and development relationships. The University, through the COI Administrator, will develop and maintain a file, available for public review, that will contain all such approved relationships with applicable disclosure forms.

The COI Administrator is responsible for providing written notice, as appropriate, to the awarding agency in those cases involving sponsored projects. Information regarding all conflicts of interest identified by UMD will be made available to sponsors upon request, as required by agency regulations or other sponsor requirements. Conflicts that cannot be satisfactorily resolved must be disclosed to as required by agency regulations. In the case of **Public Health Service ("PHS")** awards, or any awards where the agency so requires, the University must give notice to the agency for all conflicts of interest.

The COI Administrator will maintain records of all conflicts of interest 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. EFFECT OF NON-COMPLIANCE**

**~~(a)~~ In General**

Non-compliance with the University's Conflict of Interest and Conflict of Commitment policy or these procedures ~~is~~ may be a violation of State Ethics Law and may result in disciplinary action and/or other sanctions in accordance with University policies, State Ethics Law, or other applicable State or federal laws and regulations.

Failure to properly disclose outside professional activities when required on sponsored research proposals funded by the US government could also result in a violation of US federal law.

**(b). Additional Considerations for Conflicts of Interest in Research or Development**

All identified conflicts of interest must be satisfactorily managed, reduced, or eliminated prior to the University's expenditure of any funds under an award for any sponsored project. In addition to disciplinary action and/or other sanctions, non-compliance with the conflicts 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 Employees with respect to future proposal submissions.

Non-compliance, or questions and/or concerns about possible non-compliance, in connection with any conflict of interest in research or development should be reported in writing to the **Associate Vice President for Research Administration**, who will review the report and confer with other University personnel, including the Chair of the COI Committee, as needed, to determine whether further action is warranted including, but not limited to, referring the matter to a Compliance Subcommittee of the COI Committee (consisting of the Chair and two designees of the Chair) and/or invoking other University policies and procedures and implementing sponsor requirements, as appropriate.

If the failure of an investigator to comply with conflict of interest policies or procedures has biased the design, conduct, or reporting of funded research, the University must promptly notify the sponsoring agency of the corrective action taken or to be taken. -The sponsoring agency will consider the situation and may take further action, which may include directions to the University on how to maintain appropriate objectivity in the funded project.