



**Technical Amendments to the University of Maryland Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B])**

**TO Darryll J. Pines | President**

**FROM Rochelle Newman | Chair, University Senate**

I am pleased to forward the accompanying legislation for your consideration and approval. Patrick O'Shea, Chair, Conflict of Interest Committee and Beth Brittan-Powell, Director, Conflict of Interest Office presented the Technical Amendments to the University of Maryland Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B]) which the University Senate Leadership approved. Please inform the Senate Leadership of your decision and any administrative action related to your conclusion.

**Approved:**

**Date:**

**12-16-2022**

**Darryll J. Pines  
President**

Copies of this approval and the accompanying legislation will be forwarded to:

- Jennifer King Rice**, Senior Vice President and Provost
- Gregory Ball**, Vice President for Research
- Willie Brown**, Interim Executive Secretary and Director, University Senate
- Jen Gartner**, Interim Vice President and General Counsel
- Dylan Baker**, Associate Vice President for Finance and Personnel
- John Bertot**, Associate Provost for Faculty Affairs
- Elizabeth Beise**, Associate Provost for Academic Planning & Programs
- Rhonda Smith**, Director, Division of Academic Affairs
- Michele Eastman**, Assistant President and Chief of Staff
- Christopher Jarzynski**, Chair-Elect, University Senate
- Ellen D. Williams**, Past Chair, University Senate
- Patrick O'Shea**, Chair, Conflict of Interest Committee
- Beth Brittan-Powell**, Director, Conflict of Interest Office



## Technical Amendments to the University of Maryland Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B])

**PRESENTED BY** Rochelle Newman, Senate Chair

**REVIEW DATE** SEC – November 16, 2022 | SENATE – February 7, 2023

**VOTING METHOD** N/A

**RELEVANT POLICY/DOCUMENT** [II-3.10\(B\) – University Of Maryland University of Maryland Procedures on Conflict of Interest and Conflict of Commitment](#)

**NECESSARY APPROVALS** University President

### ISSUE

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The University of Maryland Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B]) was last approved by the President on February 4, 2021. Currently, the Research Council is reviewing both the University of Maryland Policy and Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[A]);II-3.10[B]) ([Senate Document #20-21-14](#)). The current review stems from a lack of clarity of written guidelines for what constitutes a conflict of interest which could lead to inconsistencies in application of the policy across units or result in undeclared conflicts.

On November 9, 2022, Patrick O’Shea, Chair, Conflict of Interest Committee, and Beth Brittan-Powell, Director, Conflict of Interest Office, sent the Senate Office a proposal to update the Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B]) to reflect the current Conflict of Interest review procedures. ([Senate Document #22-23-17](#)). The procedures have been converted from paper and form submissions to an electronic process through the Kuali Conflict of Interest (KCOI) disclosure system. The electronic system allows faculty and staff to disclose their outside activities and/or Significant Financial Interests in outside organizations related to their University Responsibilities by submitting a timely disclosure. The disclosure is then sent electronically to the relevant reviewers and the Conflict of Interest Committee. This new process makes the references to forms and paper submissions in the University of Maryland Procedures on Conflict of Interest and Conflict of Commitment (II-3.10[B]) obsolete. The policy also includes out-of-date web links that need to be updated to reference the new system.

The revisions to the procedures include removing the word “forms,” incorporating terminology to align with the current practice through the KCOI system, and updating the title for an Office of Research administrator. Additional revisions address removing outdated and typographic errors.

These revisions are all non-substantive and technical. Without the proposed revisions, the procedures are causing confusion for campus community members who are required to comply with the procedures.

The Senate Executive Committee was advised of the proposed technical revisions at its November 16, 2022 meeting. No committee members objected to submitting the technical amendments for approval.

## **RECOMMENDATION**

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The technical revisions should be approved as reflected.

## **COMMITTEE WORK**

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N/A

## **ALTERNATIVES**

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N/A

## **RISKS**

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There are no risks to the University posed by these technical revisions.

## **FINANCIAL IMPLICATIONS**

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There are no financial implications involved in these technical revisions.



## **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; Technical revisions approved by the President on December 16, 2022)

### **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.

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<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 **Disclosure 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 **through the Kuali COI (KCOI) system** <https://usmd.kuali.co/coi>. ~~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 **how to submit a disclosure the form** and conflicts of interest can be found at <https://research.umd.edu/resources/research-compliance/conflicts-interest-coi/complete-disclosure>. ~~<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

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<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/>.)

professional activity and interaction with 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 Employee while they pursue outside ~~activities interactions~~ and Relationships.

If an activity or Relationship has been approved by the University's Conflict of Interest Committee, the Employee must ~~timely~~ submit an **updated KCOI disclosure within 30 days** ~~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 **continuing** 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 **complete their review sign** and **the system will route 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 **Assistant Vice President Director, of the** 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 disclosures **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 disclosures ~~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.