SUBJECT: Ethics and Conflict of Interest
Policy Number: 411.0
Adopted: January 24, 2008; Revised: December 10, 2014

I. STATEMENT OF POLICY

The Commissioner of Higher Education (CHE) is committed to fulfilling the mission of the Montana University System (MUS) with integrity and in compliance with state and federal ethics and conflicts of interest laws and with Board of Regents (BOR) Policy. This policy is adopted pursuant to § 2-18-102(4), MCA, which requires the adoption of rules of conduct for state employees, and BOR Policy 770, Conflict of Interest. This policy applies to the CHE, the staff of the CHE, the MUS presidents, chancellors and deans, and all MUS legal staff. For campus employees, the disclosure section is administered by the campus and submitted to the CHE and MUS Chief Legal Counsel for review.

A conflict of interest may exist whenever an employee’s work responsibilities, actions or decisions may be, are, are perceived to be, or have been, influenced by considerations of personal or financial gain. It is the policy of the CHE that the activities of covered employees are free of undue influence or bias that may result from conflicts of interest. This policy is intended to enable employees to recognize potential conflicting interests and thus protect themselves and the MUS from such interests through disclosure, evaluation, and, if required, management or elimination of conflicts of interest.

II. INTRODUCTION

MUS employees serve the MUS and its mission of teaching, research, and service to the citizens of Montana. That mission is enhanced by the interaction of employees with business, government, and professional societies and institutions, and other individuals and organizations. The BOR and CHE encourage activities that support the mission through dissemination of knowledge, enhancement of educational opportunities for students, and economic development.

These activities can, however, create the potential for conflict of interest in which employees’ external activities or interests affect, or appear to affect, the manner or extent to which those employees carry out their MUS responsibilities. Such conflicts, real or apparent, may undermine public and professional confidence in the MUS, diminish the ability of the MUS to accomplish its mission, and violate state or federal law. The existence of a conflict of interest does not necessarily mean that the activity at issue violates law or must be avoided or discontinued; often, conflicts of interest can be dealt with effectively through disclosure and other steps to resolve or manage the conflict. Thus, an integral part of this policy is the disclosure and management system detailed herein.

III. DEFINITIONS

A. Conflict of Interest. A Conflict of Interest occurs when: (1) a covered employee has a personal interest that is inconsistent or incompatible with the employee’s obligation to the MUS to exercise the employee’s best judgment in pursuit of the interests of the MUS; (2) a non-MUS activity unreasonably encroaches on the time an employee should devote to the affairs of the MUS; or (3) an employee’s non-MUS activities unreasonably impinge on or compromise the loyalty or commitment to the employee’s system and campus duties and responsibilities.

In determining whether a conflict of interest exists, an important consideration is whether an independent observer might reasonably question whether the employee’s professional actions or decisions are influenced by considerations of personal gain, financial or otherwise.
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B. Significant Financial Interest. A significant financial interest is anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); ownership interests (e.g., stocks, stock options or other ownership interest); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). Significant financial interest includes the interests of the employee’s immediate family as well but does not include:

1. An equity interest that, when aggregated for the employee and the employee’s immediate family, meets both of the following tests: has a value of $10,000 or less as determined through reference to public prices or other reasonable measures of fair market value and represents a five percent or less ownership interest in any single entity.

2. Annual salary, royalties, or other payments that when aggregated for the employee and the employee’s immediate family amount to $10,000 or less over 12 months.

3. Salary, royalties, or other remuneration received from or through the MUS or any campus.

4. Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities.

5. Income from service on advisory committees or review panels for public or nonprofit entities.

6. A financial interest arising solely by reason of investment in a business by a mutual, pension or other institutional investment fund over which the employee does not exercise control.

C. Immediate Family. The employee’s family includes a spouse, dependent children, parents and siblings by affinity.

IV. ETHICS AND CONFLICT OF INTEREST STANDARDS

A. An MUS employee may not regulate, monitor or engage in financial transactions with entities that serve the employee’s private business purposes or for an entity which the employee serves as an officer without addressing the conflict through this policy. [Ref 2-2-121(2), MCA]

B. An MUS employee may not receive pay from two separate public employment positions that have overlapping hours. [Ref. 2-2-104(3), MCA]

C. An MUS employee must disclose employment in public positions that may overlap with his or her employment with the MUS.
D. In some cases an MUS employee who receives multiple salaries from multiple public employers for overlapping work hours, must report their employment and salaries to the Commissioner of Political Practices within 15 business days of the occurrence, contract agreement, or receipt of payment. ARM 44.10.601.

E. An MUS employee may not solicit or accept employment, or engage in negotiations for employment, with an entity an employee regulates unless the employee provides written notification to the MUS. [Ref. 2-2-121(2)(f)]

F. An MUS employee must disclose to the CHE and to the Commissioner of Political Practices, any ownership or employment interest that creates a conflict that may infringe on the employee’s ability to perform assigned duties in the best interest, of the MUS. [Ref. §§ 2-2-105(4) and 2-2-131, MCA]

G. An MUS employee is prohibited from accepting, for performing official duties, a gift of substantial value ($50 or equivalent economic benefit) which would tend improperly to either influence or reward the employee’s official actions. [Ref. §§ 2-2-104(1)(b) and (2), MCA and 45-7-104, MCA]. Further definitions of what are not considered “gifts of substantial value” are defined at 2-2-102(3)(i)-(V), MCA. All prohibited gifts and offers of gifts or payments must be reported to the CHE.

H. An MUS employee must report any crime, attempted crime, or planned crime of which he is aware to the CHE and to proper law enforcement authority.

V. DISCLOSURE

The key mechanism for implementation of this policy is disclosure. Disclosure allows the MUS and the employee to evaluate personal interests to determine if they present potential conflicts of interest and to take appropriate action based on the evaluation. The CHE and non-classified employees must: (1) annually complete and submit a statement of service on outside governing boards in accordance with BOR Policy No. 760 and (2) disclose to the CHE (the CHE must disclose to the BOR) any other potential conflicts of interest annually and as they arise in writing and on forms provided for this purpose. The forms must be submitted to the Deputy Commissioner for Human Resources. Such disclosures must contain the following information:

A. The acquisition by the employee, or an immediate family member, of a significant financial interest in an entity engaged in commercial or research activities directly related to the employee’s MUS responsibilities.

B. The holding of an executive or officer position in, or serving as a member of the board of directors of, an entity engaged in commercial or research activities directly related to the employee’s MUS responsibilities.
C. The holding by an immediate family member of an executive or officer position in, or serving on the board of directors of, an entity engaged in commercial or research activities directly related to the employee’s MUS work.

D. The planned direct participation in an MUS decision which would involve a direct benefit or detriment to: a family member; a person in whom or with whom the employee has a financial interest; or a person with whom the employee has a consensual romantic relationship.

E. Any financial interest of the employee or an immediate family member in an entity involved in an MUS purchase or sale whenever the employee is in a position to recommend or approve the purchase or sale.

F. Participation as an employee, officer, board member, or owner in an entity which has (or wishes to have) rights to intellectual property for which the employee is or was an inventor or creator in work for a campus or the MUS as provided in BOR Policy § 407.

G. The acquisition of any personal or financial interest which creates a potential, or perceived, conflict of interest.

VI. DISCLOSURE REVIEW AND DISPOSITION

A. Initial Review. The CHE and Chief Legal Counsel shall review such disclosures and determine whether a conflict of interest exists.

B. New Hires. All CHE employment offers must be contingent upon completion and approval of the conflict of interest disclosure form and must be included in the official job offer letter.

C. Waiver of Conflict. The CHE may, in consultation with the Chief Legal Counsel, waive the conflict and the need for a conflict management plan based upon a finding of any of the following:

1. The conflict of interest is so remote that there is no significant probability for bias or undue influence on the employee’s university duties and responsibilities;

2. Any resolution of the conflict other than by disclosure and waiver would be ineffective or inequitable and the conflict is not prohibited by statute or regulation; or

3. Any bias reasonably expected is outweighed by the interests of scientific progress, technology transfer or the public health and welfare, and the conflict is not prohibited by statute or regulation.

D. Conflict Management. If a conflict of interest is not waivable, the CHE, in consultation with the Chief Legal Counsel, will develop a written conflict management plan to manage, reduce,
or eliminate the potential for conflict of interest. The plan may employ strategies including, but not limited to, the following:

1. Public disclosure of the significant financial interest;
2. Monitoring or modification of the relevant employment duties;
3. Disqualification from participation in the conflicting employment activity;
4. Divestiture of the conflicting interest; or
5. Severance of the relationship creating the conflict of interest.

Whenever a decision is made to manage rather than eliminate the conflict of interest, the Chief Legal Counsel shall make a written statement explaining why management is in the best interests of the MUS. Such statement may be included in the conflict management plan.

Relevant questions to consider in designing an appropriate conflicts management plan include, but are not limited to:

A. What is the magnitude of the financial interest?
B. What is the level of incentive created by the interest?
C. How direct is the link between the interest and the duties of the employee?
D. Could the conflict compromise, or appear to a reasonable person to compromise, the objectivity of the employee?
E. Could the conflict adversely affect students?
F. Could the conflict unreasonably interfere, or be perceived as interfering, with the employee’s commitment to MUS and campus responsibilities?

VII. APPEAL PROCEDURE

A covered employee who disagrees with the final decision of the Commissioner may appeal further as provided in the Board of Regents Appeal Policy, § 203.5.2.

VIII. APPLICABLE LAWS AND POLICIES

Board of Regents Policy 770, Conflicts of interest
Title 2, Chapter 2, Part 1, MCA, Standards of Conduct - Code of Ethics

IX. CONTACTS

Any employee may contact the Deputy Commissioner for Human Resources or Chief Legal Counsel at any time about a real or potential conflict of interest.
CONFLICT OF INTEREST DISCLOSURE STATEMENT

This form is to be used for the following purposes: (1) for annual disclosures to be submitted by July 1 of each year; and (2) for disclosures of potential conflicts of interest whenever they occur.

Submit your completed form to the Deputy Commissioner for Human Resources and provide a copy to your immediate supervisor. For questions concerning the information required by this form, or any definitions, refer to OCHE Ethics and Conflict of Interest Policy No. 411.0 viewable at http://mus.edu/che/intranet/ochepolicy/index.asp or contact the Deputy Commissioner for Human Resources or the Chief Legal Counsel.

Certification

By signing below, I hereby certify:
1. I have read and understand the OCHE Policy No. 411, Ethics and Conflict of Interest; and

2. I have: [check the applicable lettered item]
   a. No relationships, contractual commitments, or financial interests that are or might reasonably be perceived to be in conflict with my duties and responsibilities at OCHE;
   b. Potential conflicts of interest not previously disclosed as described below in the Disclosure Statement; or
   c. A potential conflict of interest which has been duly disclosed previously and there has been no change which requires an updated disclosure.

Disclosures

Complete this section only if you have checked 2b or 2c above. If you checked 2a, you should sign the bottom of the form, date it, and submit it as indicated above.

1. I or my spouse or dependent child(ren) or my parents or my siblings by affinity have the following interests or relationships (check all applicable):
   a. A Significant Financial Interest in a non-college entity/enterprise directly related to my duties as follows:
      ___Salary or other payment for services (e.g., employment, consulting fees/ honoraria)
      ___Ownership interest (e.g., stock, stock options, partnership interest, or other)
      ___Intellectual property rights (e.g., patents, copyrights or royalties)
   b. Hold a position of ___executive, ___officer, or ___director in an entity engaged in commercial activities directly related to my OCHE responsibilities.
   c. Other potential Conflict of Interest.

2. In my position at OCHE, I have responsibility for decisions which may result in direct benefits or detriments to:
   a. A relative as defined in Montana University System’s Nepotism Policy (parent, grandparent, great-grandparent, child, grandchild, great-grandchild, brother, sister, aunt, uncle, niece, nephew, or cousin, by blood relationship; spouse; or brother, sister, parent, or child of spouse; or spouse of one’s brother, sister, parent or child).
b. ___ A person in whom or with whom I (or my Spouse or Dependent Children) have a financial interest.

c. ___ A person with whom I have a romantic relationship.

3. ___ I participate as an employee, officer, board member, or owner in an entity which has (or wishes to have) rights to intellectual property for which I was an inventor or creator in my work for OCHE.

With regard to the above-disclosed interests, attach a written explanation including the name of the entity or person, the nature and extent of the interest or relationship, and any other information necessary to an understanding of the potential Conflict of Interest.

The information contained in this form is complete and accurate to the best of my knowledge, and I acknowledge my continuing obligation to update my disclosure when there is a significant change in my personal or financial interests creating potential Conflicts of Interest.

Signed: _______________________________       Date: ______________________

Print Name: _______________________________