

REVISED

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: Proposed Amendment to USM Policy III-1.11—Policy on Conflicts of Interest in Research or Development

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: June 8, 2017

SUMMARY: The proposed amendment to current USM policy would require all institutions to provide training regarding the Maryland Public Ethics law. All faculty at the level of department chair and above would be required to receive training at least once every five years. A similar amendment to staff policy is also being proposed to the Committee.

The Public Ethics Law establishes certain obligations and prohibitions applicable to state employees (both faculty and staff) and, in some cases, to former state employees. The law addresses employee conflicts of interest, outside employment, acceptance or solicitation of gifts, and use of the prestige of an official position for personal gain, among other issues. It differs in significant respects from federal regulations governing conflicts of interest in research activities. Failure to comply with the State Ethics Law can result in an investigation and employee discipline, including termination.

The State Ethics Commission is responsible for interpreting the Ethics Law and administering a program that requires certain employees to file a financial disclosure statement annually. Those employees must complete a one-time, on-line ethics training course administered by the Commission. However, this requirement does not ensure periodic training, nor does it cover all faculty employees at the department chair level or above.

USM Policy on Conflicts of Interest in Research and Development addresses faculty obligations and exemptions under the Maryland Public Ethics Law and requires institutions to develop procedures based on the policy. It focuses primarily on one exemption in the law that permits faculty in certain circumstances to have an otherwise prohibited financial relationship with an entity engaged in research and development, so long as the relationship is disclosed and approved under the institution's conflict of interest procedures.

While most institutions are providing some type of ethics training to some employees, the purpose of the proposed amendment is to ensure that all faculty who are classified as department chairs or above will receive training regarding the specific provisions of the Public Ethics Law when they are first employed in such position, and will receive additional training every five years thereafter.

The amendment will permit institutions flexibility to establish training protocols that (1) are likely to be most successful given the individual academic culture of the institution and (2) will mesh with the institution's other training programs. The on-line training currently provided by the State Ethics Commission could be used to satisfy the policy's training requirement. In addition, upon request, the Ethics Commission currently supplies qualified individuals to provide on-campus training on the law to groups identified by the institution, providing another avenue for satisfying the new policy requirement. Alternatively, institutions may choose to develop their own training programs or continue any existing programs.

A red-lined copy of policy is attached. This proposed policy amendment has been reviewed by CUSF and the institutional provosts and presidents. It will be presented to the Chancellor's Council for review at its June 6th meeting. The Attorney General's Office has reviewed and approved it.

ALTERNATIVE(S): The Committee could choose to recommend that the Board not approve the proposed policy amendment or could recommend alternatives to the proposed amendment.

FISCAL IMPACT: There is no estimated fiscal impact.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the proposed policy amendment.

COMMITTEE RECOMMENDATION: RECOMMEND APPROVAL WITH ADDED TECHNICAL CHANGES
DATE: 6/8/17

BOARD ACTION: DATE:

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

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

Approved by the Board of Regents, August 23, 1996; amended October 24, 2014;
amended)

I. Introduction

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

II. Policy

- A. A present or former official or employee of a constituent institution of the System may have a relationship (as defined herein) with an entity engaged in research or development, or an entity having a direct interest in the outcome of research or development, which relationship would otherwise be prohibited by the conflict of interest provisions of the Ethics Law, if such relationship is disclosed and approved by the President of the educational institution in accordance with the institution's faculty conflict of interest procedures developed pursuant to this Policy.
- B. The Chancellor, a Vice Chancellor, a President, or a Vice President or one holding a similar such position may have such a relationship only if the Board of Regents makes the following findings:
 - 1) that participation by, and the financial interest or employment of, the official is necessary to the success of the research or development activity; and
 - 2) that any conflict of interest can be managed consistent with the purposes of relevant provisions of the Public Ethics Law.

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

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

D. Nothing in this Policy allows an exemption on the part of any official or employee of the System from the provisions of ~~§5-505~~ ("Solicitation or acceptance of gifts of honoraria") of the ~~General Provisions State Government~~ Article. Further, an official or employee of the System may not (1) represent a party for contingent compensation in any matter before the Board of Regents or before the State's Board of Public Works, or (2) intentionally misuse his or her position with the System for personal gain or for the gain of another person.

E. Each institution shall provide training regarding all applicable provisions of the Maryland Public Ethics Law (1) to all newly appointed faculty members and administrators serving at the level of Chair or above within six months of such appointment; and, (2) to all existing faculty members and administrators serving at the level of Chair or above at least once every five years. Online training provided by the State Ethics Commission for individuals who file financial disclosure statements may be substituted for the initial training required under this Policy.

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

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

III. Procedures

A. Each institution shall develop procedures based on the above policy and the purposes of the Maryland Public Ethics Law as stated at ~~Section 45-101~~ of the ~~General Provisions State Government~~ Article of the Maryland Annotated Code. The procedures shall be approved by the Office of the Attorney General and approved as to conformity with Maryland Public Ethics Law by the State Ethics Commission. The approved procedures shall be filed with the Office of the Chancellor.

B. Procedures shall:

- 1) Require timely disclosure of any relationship. The disclosure shall be filed with the State Ethics Commission, and maintained as a public record at the institution.
- 2) Subject to paragraph (5), require review of all disclosed relationships by a designated official who shall determine what further information must be disclosed and what restrictions shall be imposed in order to manage, reduce, or eliminate any actual or potential conflict of interest. The designated official shall also determine whether or not the disclosed relationship represents a harmful interest, as defined herein. If so, approval shall not be granted.
- 3) Include guidelines to ensure that relationships do not improperly give an advantage to entities with which the relationships exist, lead to misuse of institution students

or employees for the benefit of such entities, or otherwise interfere with the duties and responsibilities of the official or employee maintaining the relationship.

- 4) Subject to paragraph (5), require that each relationship be approved or disapproved by the president of the institution, with such determination to be the final decision.
- 5) Require that any relationship maintained by the President or a Vice President, by the Chancellor or a Vice Chancellor, and by one holding any other position designated by the Board of Regents be approved by the Board of Regents.

IV. Reporting

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

V. Definitions

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