



**Working Paper on Conflict of Interest  
For Review and Comment**

**INTRODUCTION: ETHICAL INSTITUTIONAL PRACTICES ARE INTEGRAL TO HIGHER  
EDUCATION**

As stewards of the public trust, college and university presidents, trustees, administrators and faculty know they have an obligation to uphold the highest ethical standards in discharging the business and academic affairs of their institutions. Their actions must provide models not only for legal compliance but also for sound ethical conduct.

At the same time, to achieve their missions, colleges and universities (terms which, in this working paper, refer to all types of higher education institutions) must meet daunting expectations. Every aspect of the academic mission—teaching, research, and service—requires rich and varied contacts between the institution and the larger society. For instance, public policy strongly encourages institutions to work with businesses to develop and bring to the market the inventions and innovations that academic research yields. And the institutions themselves need an array of transactions to build dormitories, operate laboratories, and offer the range of programs and services that students, faculty and staff expect. Colleges and universities, if they are to meet society's aspirations for them, cannot be disconnected from the world around them.

To a very large extent, colleges and universities across the country have succeeded in carrying out their missions in a manner consistent with the high ethical standards they set for themselves. New economic demands and emerging forms of financial and academic relationships, though, mean that even the most scrupulous collegiate leader sometimes needs guidance to discern the most ethical course of action. As well, the ethical expectations that outsiders set for higher education change over time. Transactions once deemed acceptable may now be the subject of questions about whether, for example, they are at arm's length. Increased public scrutiny puts a greater premium than before on institutions taking a thoughtful and systematic approach to identifying and addressing conflicts of interest. In this changing environment, institutional leaders may benefit from guidance on this important subject.

The purpose of this paper is to provide guidance to trustees, presidents, administrators and faculty on one aspect of ethical academic and business practices: institutional policies and practices to identify and address conflicts of interest of individuals or of the institutions themselves. The guidance is offered with sensitivity to the myriad good policies and practices already in place to ensure ethical conduct among the nation's higher education institutions. This statement aims to take into account current thinking about ways to strengthen those policies and practices to ensure that higher education institutions continue to hold themselves to the highest ethical standards.

Higher education in the United States comprises thousands of institutions, of a great variety of institutional types. The institutions include, for example, community colleges, four-year liberal arts colleges and large research universities, public and independent institutions, religiously affiliated institutions, urban and rural campuses, liberal arts colleges and technical institutes. The culture and missions of the institutions vary greatly. There is thus likely no one conflict of interest policy that would fit all of the institutions. Accordingly, the purpose of this statement is not to prescribe a single approach to conflicts management. Rather, this statement aims to provide tools that each institution may use to inform its own thinking about these issues.

**WHAT IS A “CONFLICT OF INTEREST” IN THIS CONTEXT?**

The term “conflict of interest” eludes easy definition. In general, the most conventional form of a conflict of interest involves money—typically, an institutional decision maker has some kind of financial stake in the outcome of the decision. A conflict can also arise when the decision maker has a non-monetary stake in the outcome of a decision—for example, a personal relationship, prestige, or career advancement. Most commonly, the interest in question belongs to an individual—an institutional decision-maker, or his or her family member or other associate. But as discussed below, it is important to recognize that the institution itself also may have conflicting interests.

Not all conflicts of interest are wrong or unacceptable. Although some categories of conflicts may be prohibited by law, or law may require that they be disclosed and/or managed in a particular way, in many cases conflicts management is not primarily a question of law but of ethics. In some circumstances, conflicts may be inevitable, and the question for institutional leaders may be how to manage the conflict. Some considerations can be identified that tend to signal that a conflict should be forbidden or carefully managed. Often this would be the case where, for example, an individual’s outside activities or relationships or an institution’s own interests entail the actuality or appearance that the quality or objectivity of judgment could be impaired; or that an individual is placing personal interest before the institutional interest; or that institutional resources or assets apparently are being used for private gain without fair compensation to the institution; or that an individual is receiving something of value from a business where the business would appear to benefit from the individual’s decision on behalf of the institution; or that an individual is pursuing an economic opportunity identified in the course of institutional service, where the opportunity is not widely available.

This paper identifies some key principles, questions, and considerations to help institutional leaders gauge which outside relationships are appropriate and which are not. The paper is a discussion piece and a working paper. It is intended to advance and help focus a conversation in the higher education community about ethical business practices and appropriate ways to address conflicts of interest. Its authors hope that it will prompt review and comment from a wide audience, and instigate an exchange of views that will refine analysis and heighten awareness.

Consideration of conflict of interest in higher education seems usefully to begin with a brief look at the history of efforts to regulate it and a snapshot of the current legal environment.

**HISTORICAL AND LEGAL BACKGROUND: GOVERNMENTAL AND INSTITUTIONAL REGULATION OF CONFLICTS OF INTEREST IN HIGHER EDUCATION**

Higher education leaders have long viewed conflicts of interest as an issue requiring careful address. The university president Robert Hutchins worried, more than half a century ago, that in seeking to raise money universities would feel “compelled to sell themselves to the highest bidder.” Dependence on corporate interests was leading higher education institutions away from their proper role as social critics, Hutchins believed, and, consequently, “Instead of enlightening society, particularly about its own shortcomings, they flatter it.”

Historically, the professoriate has had an important role in institutional regulation of faculty members’ outside financial interests. The American Association of University Professors’ 1940 statement on academic freedom declared that “research for pecuniary return should be based upon an understanding with the authorities of the institution.” In 1965, AAUP recommended that universities develop institutional policies “to guide the individual university staff members in governing their conduct in relation to outside interests that might raise questions of conflict of interest.” The AAUP cited the “increasingly necessary and complex relationships among universities, Government and industry . . . in Government-sponsored research.”

Institutional regulation of conflicts of interest has grown more complex over time, with the growing pervasiveness and complexity of academic-industry relationships. Federal policy has encouraged these relationships, and the predominant means of addressing the increased potential for conflicts of interest has been

increasingly sophisticated self-regulation by the institutions themselves. In 1982, two years after Congress passed the Bayh-Dole Act, which facilitates commercialization of inventions, university and industry leaders met at Pajaro Dunes, California. Rather than adopt a one-size-fits-all approach to regulation of academia-biotechnology industry relationships, such as a model policy, the participants issued instead a set of principles in the form of a draft statement. It recommended that “each university should address the [conflict of interest] problem vigorously” by adopting the institution’s own policies and procedures.

### **The Legal Environment**

Although a number of federal and state statutory and regulatory requirements pertain to individual conflicts of interest at colleges and universities, the overall legal regime for conflicts at colleges and universities has developed in patchwork fashion. Many of the rules differ from state to state, and much of the analysis of conflicts of interest does not fall clearly into any legal requirement or prohibition. The legal environment has thus allowed and encouraged institutions to take different approaches to regulating conflicts of interest on their own campuses.

***Federal regulation.*** Although federal laws and regulations mandate conflict-of-interest-related requirements in certain areas applicable to colleges and universities—such as the use of federal funds for research, ethical review of such research, and other federally funded activities, as well as research used to support requests for FDA approval of drugs and medical devices—such laws and regulations often give institutions some leeway to design their own standards and methods. Pending federal legislation addresses financial relationships involving student aid, and the U.S. Department of Education recently issued revised regulations on that subject. The federal tax code’s “intermediate sanctions” rules, which address self-dealing and excessive benefit to insiders at tax-exempt organizations, provide for penalties if trustees, officers or other insiders benefit unduly from transactions with the organization. The Internal Revenue Service now requires organizations that seek tax-exempt status to disclose whether they have a conflict of interest policy. Yet apart from these areas of regulation, for the most part, in a great many areas of college and university activity, federal policy does not prescribe an approach to conflicts of interest.

***State regulation.*** State public-ethics laws address some conflicts at some public institutions. Many, though not all, public colleges and universities are subject to such laws; but the legal regimes vary considerably from state to state. While the public-ethics laws in some states extensively regulate public institutions in the state, many public institutions have leeway to regulate themselves in a way that does not conflict with state law, and many of these institutions have adopted their own conflict of interest policies.

Non-public, not-for-profit higher education institutions generally are subject to the not-for-profit corporation law of the state in which they are located, which law may or may not include statutory provisions on conflicts. Trustees and other fiduciaries are subject to a legal duty of loyalty to the institutions, which duty, as interpreted by the courts, is likely to preclude self-dealing with the organization absent disclosure and ratification by the disinterested trustees. State attorneys general are authorized to enforce these laws. From time to time the state attorneys general have involved themselves in conflicts of interest matters at colleges and universities.

### **Guidance and Institutional Policy**

***Guidance.*** Over the years, federal agencies and the higher education community have developed guidelines to address conflicts of interest in specific areas, notably research. High-profile cases in the 1990s led the U.S. Department of Health and Human Services, as well as such groups as the Association of American Medical Colleges, to appoint task forces to study conflict of interest in biomedical research. Although not legal requirements, the resulting guidelines can assist researchers and institutions. The list of Resources at the end of this statement includes some of these guidelines documents.

***Institutional policy.*** In light of the variation in legal standards across states, between the federal and state governments, and even within the federal government, and the institution-based approach to regulating conflicts

of interest that has developed, it should not be surprising that conflict of interest procedures and standards vary from institution to institution. Institutional practices in implementing the policies vary, too. Because many of the policies do not proscribe specific conflicts, much is left to administrative discretion and interpretation. A sound method for approaching conflict of interest regulation at a higher education institution would entail review of the applicable federal and state legal requirements to ensure that institutional policy effectuates such requirements; identification of potential conflicts of interest, categories of employees, and areas of institutional activity that, in the college or university's view, such legal requirements do not address prescriptively or do not adequately address; and consideration of whether such potential conflicts, employees and areas of activity should be addressed in an institutional policy.

### **BASIC PRECEPTS AND POSSIBLE CONSIDERATIONS PERTINENT TO INSTITUTIONAL REGULATION OF CONFLICTS OF INTEREST**

As the foregoing discussion suggests, government has left to higher education institutions considerable discretion to regulate conflicts of interest. This paper accordingly seeks to provide guidance to institutions, by (1) proposing basic precepts that are universal or nearly universal and (2) identifying questions and criteria to guide review of conflict of interest policies and of particular situations.

#### **Basic Precepts**

The working group reaffirms that each institution should have substantial discretion to address conflicts of interest in a manner consistent with its own sound judgment, values, mission, and experience. Nonetheless, the working group believes certain basic precepts that are universal or nearly universal among higher education institutions can form a baseline for management of conflict of interest. Of course, all higher education institutions should require that their trustees, staff and faculty conduct themselves in accordance with applicable laws and regulations. And there should be a clear expectation that employees and trustees will put the interests of the institution before their own conflicting interests. In addition, absent unusual circumstances, which the working group believes should be exceedingly rare:

- At every higher education institution, conflicts of interest of trustees, faculty and staff should be addressed in written policy, whether in one policy or separate policies.
- The policies should require, at a minimum:
  - disclosure of known significant financial interests a faculty member, administrator or trustee has in outside organizations that do or seek to do business with, or may otherwise benefit financially from association with, the institution, where the individual has actual or apparent influence over an institutional decision that may affect the organization;
  - review of disclosures by one or more institutional officials; and
  - procedures to address identified conflicts.
- Trustees, faculty, administrators and staff should be notified of the requirements of pertinent policy at least annually.
- One or more persons at the institution should be available to answer questions about the policies.
- The institution should review and assess its policies and practices in this area from time to time.

**Possible Considerations to Guide Institutional Review**

In addition to the basic precepts identified above, the following illustrative questions and considerations are offered to aid institutional review of the institution's conflict of interest policy and implementation of that policy. The discussion and questions address relationships with vendors and prospective vendors, conflict of interest policy, implementation of such policy, and institutional conflicts of interest.

***Relationships with vendors and prospective vendors***

In some circumstances, an individual's relationship with another organization that does or seeks to do business with the institution can give rise to an actual or apparent conflict of interest. In general, if the individual is in a position to influence an institutional decision that may affect the business, such as selecting a vendor or negotiating a contract, the relationship should, at a minimum, receive close scrutiny. A different analysis is likely to be applied if the relationship with the outside company does not actually or apparently relate to the individual's work for the institution, such as, for example, if a faculty member consults for a company where the consulting work is completely separate from and the faculty member has no responsibility for the institution's business arrangements with the company. With these considerations in mind, it is useful for an institution to ask:

- Under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to accept a gift from a vendor to the institution?
- Under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to accept vendor-paid travel?
- Under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to accept honoraria or consulting income from vendors?
- Under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to own stock or have another financial interest in a vendor?
- Under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to seek or accept employment from a vendor?

***Conflict of interest policy***

- Should the standards and procedures applicable to institutional review of conflicts of interest differ according to the status of the person involved? That is, should a trustee's conflict be assessed differently than the conflict of a faculty member or an administrator (and so on)? Why?
- Under what circumstances should institutional policy give the persons disclosing conflicts of interest discretion to decide whether a particular interest needs to be disclosed?
- Should institutional conflict of interest policy cover all trustees, faculty, and administrators? Which other members of the institutional community should be covered, such as support staff; students who research, teach or act in a representative capacity; volunteers; vendors of services and goods; and institutional affiliates and their personnel?
- Transactions involving which members of a faculty member's, administrator's or trustee's family should be imputed, for conflicts-review purposes, to the faculty member, administrator or trustee?
- Where the faculty member, administrator or trustee is materially conflicted and thus barred from being the decision-maker in a matter, should he or she nonetheless be permitted to participate in

the discussion/consideration/debate on which the decision is based?

- In what circumstances, if any, should administrative discretion be exercised to waive generally applicable institutional standards on conflicts of interest? What procedures and standards should apply to the exercise of such discretion?
- Should such matters as nepotism and conflicts of commitment, which at many institutions are addressed in other institutional policy, be addressed in the conflict of interest policy?
- Should some material conflicts of interest be subject, among other requirements, to an annual-disclosure requirement, and others not? Why?
- Should dollar-value and percentage-of-ownership threshold reporting amounts for conflicts of interest differ among (i) faculty, administrators, and trustees; (ii) institutions; and (iii) if so, why?
- Should institutional conflict of interest policy categorically prohibit some types of legally permissible conflicts?
- Should institutional conflict of interest policy address “side by side investments”, that is, investments or management positions of individual trustees, or of others who have decision making authority over the institution’s investments, in privately-held entities in which the institution also invests or is considering investment?

#### *Implementation of conflict of interest policy*

- Does the institution devote sufficient resources and staff to ensure compliance with its conflict of interest policy? Does the policy have the full support of institutional leadership?
- Is there sufficient notice and training provided to covered persons to ensure (a) disclosure is made and (b) disclosures are updated periodically and as pertinent new interests or situations arise?
- Should the institution offer ethics training? Should the institution require it? Annually, more often, or less often?
- Should such training address both ethics and legal compliance?
- Is there follow-up to ensure that all covered persons have made required disclosures?
- Are systems in place to ensure review of disclosures by appropriate persons and offices (for example: office of grants and contracts, institutional review board)?
- Is there consistency over time in how like conflict situations are addressed? Should there be?
- Does the institution commit sufficient resources to (a) managing identified conflicts and (b) ensuring compliance with conflict management plans?
- Does the institution have adequate procedures for reporting violations of the policy? Would an anonymous hotline conduce to appropriate oversight?
- Is conflict-of-interest regulation part of the institution’s overall compliance or audit program or risk-management review process?

- Which institutional representatives should be responsible for or involved in (a) review of disclosures, (b) identification of possible conflicts, (c) management of conflicts, and (d) oversight of institutional conflict of interest regulation? Should the persons involved depend on the type of conflict (for example, whether it involves sponsored research) or the person who has the possible conflict (such as a trustee, faculty member, administrator or staff member)? Should oversight of conflicts be centralized or decentralized?
- Where a bidding process is required, are the process and standards transparent?
- Does the institution have an ethics officer?

### *Institutional conflicts of interest*

In addition to individuals' conflicts of interest, institutions should consider whether financial or other interests of the institution itself may create the appearance or actuality of conflict of interest. Colleges and universities engage in a wide variety of financial transactions with outside for-profit and non-profit organizations. Such transactions are a necessary and in general proper function. They enable the institutions to provide needed resources and services to the campus community, and improve the quality of the educational experience and the quality of life for students and enrich campus life. Moreover, there is nothing unethical or inappropriate about an institution seeking to negotiate sound business arrangements; indeed, to do so is part of good stewardship of institutional resources and benefits students and other constituents of the institution.

***Institutional conflicts: research.*** One type of potential institutional conflict of interest may arise when the institution has a financial interest, such as stock ownership or a royalty interest, in a company that sponsors or has its own financial interest in research at the institution. Colleges and universities are well-advised to review such arrangements and determine whether, at least absent proper management, they raise an improper appearance that the institutional interest may affect the conduct of research or pose risks to human subjects. Institutions may wish to consult governmental and non-governmental guidance, such as that cited in the list of resources at the end of this statement, when they consider how to address institutional conflicts of interest in research.

***Institutional conflicts: commercial arrangements.*** Another type of situation that may raise questions about institutional conflicts of interest involves commercial arrangements that provide collateral benefits to the institution, such as when a vendor or prospective vendor offers a gift to the institution, or the institution shares in the revenue generated by sale of products or services to students, faculty, alumni or other constituents. Such benefits may be completely appropriate in many circumstances. Yet they should be reviewed with care in situations where the collateral benefit may affect or appear to affect decisions that influence terms or quality of goods or services provided to students or other constituents, or where they may have unwarranted influence on academic decisions. In such circumstances, an institution should ask:

- Does the transaction entail a conflict between the institution's financial interests and academic values?
- Does the transaction entail receipt by the institution of financial benefit that may affect or appear to affect the quality or price of goods or services offered to students or other institutional constituents?
- Does the transaction entail the actuality or perception that the institution is profiting to the detriment of students or other constituents?

- Does the transaction entail actual or perceived institutional endorsement of a product, service or company, such as through use of the institution's name, seal, logo or trademarks, that could inappropriately influence purchasing decisions of students or other constituents?
- What management tools are appropriate?
- Would disclosure of the collateral benefit alleviate any actual or apparent conflict of interest?
- How can the institution conduct appropriate review of institutional conflicts of interest? (a) Under what if any circumstances, in general, should the institution recuse itself from reviewing its own conflict of interest, and (b) how is the conflict to be reviewed in those circumstances?

To be sure, colleges and universities must often decide among competing interests—such as, for example, whether to spend money to refurbish a dormitory or to increase faculty or staff salaries or to provide more financial aid to students—and typically such decisions would not entail any improper conflict of interest. Economic considerations figure in an exceedingly wide variety of institutional decisions—from whether to match the high salary another institution has offered to an outstanding faculty member, to how to allocate institutional resources to various academic programs, to setting tuition levels. Normally, conflict of interest is not entailed simply because an institution stands to benefit economically from a transaction with an outside company. Yet situations may arise in which a financial incentive unduly influences or appears to influence a decision. In those circumstances, the institution should consider whether ethical standards require elimination or management of the conflicting interest.

*Institutional conflicts arising from senior administrator interests.* Institutional conflicts may also arise when an individual with substantial authority at the institution, such as a college president or a senior administrator who supervises the person responsible for an institutional decision, has an individual interest that creates the appearance or potential to affect the institutional decision. In some circumstances, the individual's position of authority, even if that individual does not participate directly in an institutional decision, may give rise to the appearance of an institutional conflict of interest and that the institutional decision was not objective. In such circumstances, institutions should consider whether disclosure of the senior administrator's financial interest would adequately manage the institutional conflict.

## **CONCLUSION**

This working paper is intended to advance a conversation within the higher education community about conflict of interest. The paper may be updated and revised from time to time following input from interested parties.

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## Resources

### **Resources on institutional-policy considerations**

Alexander E. Dreier and Martin Michaelson, “[A Guide to Updating the Board’s Conflict of Interest Policy](#)” (Association of Governing Boards of Colleges and Universities 2006).

Daniel L. Kurtz and Sarah E. Paul, “[Managing Conflicts of Interest: A Primer for Nonprofit Boards](#)” (Board Source 2d ed. 2006).

Martin Michaelson, “How is Your Institution Doing on Conflicts of Interest?” *Trusteeship* magazine of the Association of Governing Boards of Universities and Colleges, Nov./Dec. 2007, at 8.

### **Selected nongovernmental guidance materials**

Association of American Medical Colleges and Association of American Universities, “[Protecting Patients, Preserving Integrity, Advancing Health: Accelerating the Implementation of COI Policies in Human Subjects Research.](#)”

Council on Governmental Relations, “[Approaches to Developing an Institutional Conflict of Interest Policy.](#)”

Council on Governmental Relations, “[Recognizing and Managing Personal Financial Conflicts of Interest](#)” (PDF).

Federation of American Societies for Experimental Biology, “[COI Toolkit.](#)”

### **Selected federal government guidance materials**

Department of Health and Human Services: “[Final Guidance Document: Financial Relationships and Interests in Research Involving Human Subjects](#)” (PDF).

Department of Health and Human Services, Office for Human Research Protections, “[2004 Final Guidance: Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protections](#)” (PDF).

Internal Revenue Service, “[Sample Conflict of Interest Policy.](#)”

National Institutes of Health, “[Targeted Site Reviews on Financial Conflict of Interest Observations.](#)”

National Institutes of Health, “[Conflict of Interest](#)” (collected policies and guidance).

### **Selected federal regulations and policies**

Department of Health and Human Services Regulations: “[Responsible Prospective Contractors](#)” (45 CFR Part 94).

Food & Drug Administration Regulations: “[Financial Disclosure by Clinical Investigators](#)” (21 CFR Part 54).

National Science Foundation: “[Grants Policy Manual](#)” (Section 510).

Public Health Service Regulations: “[Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding Is Sought](#)” (42 CFR Part 50, Subpart F).

**Selected state government materials**

New York State Attorney General, “[College Code of Conduct](#).”

Office of General Counsel, the California State University, “[Conflict of Interest Handbook](#).”