

UNLV CONFLICT OF INTEREST / COMPENSATED OUTSIDE SERVICES POLICY

Policy: Conflict of Interest/Compensated Outside Services

Purposes: (1) To comply with NSHE and State of Nevada requirements and federal financial conflict of interest regulation requiring each institution of higher education receiving grants and contracts to have an administrative policy to identify, manage, reduce and/or eliminate conflicts of interest. (2) To comply with the NSHE requirements for reviewing compensated outside services. This Policy revises and supersedes the UNLV Conflict of Interest Pertaining to Sponsored Projects Policy and Policy on Private Professional Work adopted in 1996.

Authority: Federal Financial Conflict of Interest regulations 42 CFR Part 50, Subpart F, and 45 CFR Part 94 and grant acceptance requirements including NSF Grant Policy Manual 510, Investigator Disclosure Policy 60 F.R. 132.

Title 4, Chapter 3, Section 8 of the Nevada System of Higher Education *Board of Regents Handbook* delineates Board policy for compensated outside professional services. NSHE *Board of Regents Handbook* Title 4, Chapter 12, Sections 1-8 details the Intellectual Property Policy. Title 4, Chapter 10, Section 1.7 thereof details the Conflict of Interest Policy. NRS 281A.400 -281A.410 details the code of ethics including restrictions on conflicts of interest and compensated outside services applicable to public officers and employees in the State of Nevada.

1.0 Introduction

The University is dedicated to teaching, research, and the extension of knowledge to the public. The University also encourages and supports community and outside interactions of its faculty, staff and student employees. The personnel at the University recognize as two of their major objectives the production of new knowledge and the dissemination of both existing and new knowledge. A byproduct of these objectives is the development of new and useful products and processes and the publication of scholarly works. Such activities (1) contribute to the professional development of the individuals involved, (2) enhance the reputation of the institutions concerned, (3) provide additional educational opportunities for participating students, and (4) promote the general welfare of the public at large. As these outside interactions increase, however, there is an increased potential for actual or perceived conflicts of interest.

The University is concerned about conflicts of interest and compensated outside services because they can cause the public's confidence in the integrity of research activities and the institution to be questioned. It is appropriate for University employees to be rewarded for their participation in outside activities. University employees have a fundamental obligation to act in the best interest of the University and must not allow

outside activities or outside financial interests to interfere with that obligation. The central purpose of this policy is to enable University employees to recognize situations that may be conflicts of interest or compensated outside services and to ensure that such situations are properly reviewed and, if necessary, managed, supervised and/or monitored.

Potential conflicts of interest or compensated outside services that are properly disclosed can be adequately managed without detriment to the reputation, integrity or position of the institution and the individual. Therefore, a key part of this policy is a disclosure mechanism that allows University employees to regularly report any potential conflicts of interest or compensated outside services for review and approval by the appropriate designated official.

Another purpose of this policy is to provide University employees with meaningful guidance on the development of productive and ethical professional relationships with external partners. Additionally, this policy seeks to assure that these relationships are being reviewed and monitored to ensure they are being conducted in a manner consistent with institutional and public values.

2.0 General Policy

All University employees shall disclose whether or not they plan to engage in any outside activity or professional involvement that may constitute a conflict of interest, and/or for which they will receive compensation. Such disclosure shall be on an annual basis to their supervisor by September 15 of each year, upon application for a sponsored project, or prior to initiation of any such outside services. All disclosures must be made using the UNLV Conflict of Interest/Compensated Outside Services Disclosure form. All potential conflicts of interest and/or compensated outside services must be approved in advance, before the activity is undertaken.

All University employees shall inform those who engage them in outside professional work that they are not acting in the name of the University and that the University is neither a party to the contract nor liable for any actions of such employee. Employees performing outside professional work or scholarly services are also subject to Title 4, Chapter 1, Section 25 of the Nevada System of Higher Education policy on personal use of System property and resources.

This document describes the procedures for disclosure, review, and for the exercise of ongoing oversight of actual and/or potential conflicts. It also describes sanctions that may be applied when the policy is violated.

The University will incorporate additional processes and procedures required by federal awards if a potential conflict of interest is revealed on a sponsored award and such requirements are incorporated in the award terms and conditions.

2.1. Scope and Definition of Conflict of Interest/Compensated Outside Services

“Conflict of Interest” or “COI” means any outside activity or interest that may, or may appear to, adversely affect, compromise, or be incompatible with the obligations of

an employee in the institution. Conflict of Interest encompasses any situation in which an employee of the University uses, or is in a position to use, his or her influence and authority within the University to advance his or her own personal or financial interest, or the personal or financial interests of individuals in the employee's household, persons to whom the employee is related by blood, adoption or marriage within the third degree of consanguinity, or persons with whom the employee has substantial and continuing outside business relationships. NSHE *Board of Regents Handbook* Title 4, Chapter 10, Section 1.7 specifies Conflicts of Interest that are prohibited for any employee of the Nevada System of Higher Education. The bias of such conflicts could conceivably inappropriately affect the goals of research, instructional or administrative programs. The education of students, the methods of analysis and interpretation of research data, the hiring of staff, procurement of materials, and other administrative tasks at the University must be free of undue influence of outside interests. The appearance of a conflict may be as serious and potentially damaging as an actual conflict. Therefore apparent conflicts must also be disclosed and evaluated with the same vigor as actual conflicts. For the purposes of reporting COIs to federal funding agencies, the federal definition(s) supersedes the above definition and will be used to determine which COIs must be reported.

“Compensated Outside Services” includes outside compensated work or scholarly services performed by a University employee, but does not include income derived solely from passive investments. Provision of compensated outside services is recognized as a legitimate activity unless specifically prohibited by an employee's contract of employment. Limits on compensated outside services are detailed in NSHE *Board of Regents Handbook* Title 4 Chapter 3 Section 8. Compensated outside service is not considered appropriate when it interferes with the regular work of the University employee; involves unauthorized use of University facilities, personnel, or other resources; subjects other individuals or companies engaged in private practice to unfair competition; violates the general requirements of NRS 281A.400 -281A.410; or involves a conflict of interest specified by NSHE or University policy.

2.2. Applicability

This policy applies to all University employees. For sponsored projects, subcontractors and other external collaborators must provide adequate assurances that they are in compliance with the federal regulations referenced above. This policy applies to any research, education, administrative or service activity regardless of whether or not support is provided to the University or University employee. Support may be in the form of sponsorship, incentive, equipment or gift. Conflicts also arise in procurement situations when a University employee has the choice of purchasing goods or services from entities in which the University employee has a substantial financial or other interest.

2.3. Definition of Terms

Designated Official means the person appointed by a vice president or Provost to serve in this capacity for each unit. This designation is made at the discretion of each vice president or Provost and may be at the dean, academic department chair or supervisor, director or higher level position.

Employee means any person who is employed full or part time by the University and includes but is not limited to faculty, staff, postdoctoral appointees and students. Individuals or “investigators” (as defined by federal awards who are not paid but work as volunteers on funded projects) are also considered employees.

Financial Interest means anything of monetary value, including but not limited to, salary, or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights).

Investigator means the principal investigator, project director, and/or any other person at the University who is responsible for the design, conduct, or reporting of a sponsored project. For purposes of this policy’s disclosure requirement, the term “investigator” includes individuals in the employee’s household, persons to whom the employee is related by blood, adoption or marriage within the third degree of consanguinity, or persons with whom the employee has substantial and continuing outside business relationships.

Significant Financial Interest includes the financial interest in a business enterprise or entities where the value of such interest exceeds ten thousand dollars (\$10,000) per annum in salary, fees or other continuing payments, or includes an equity interest that, when aggregated for the employee

- exceeds ten thousand dollars (\$10,000) in value as determined through reference to public prices or other reasonable measures of fair market value and
- represents more than a five percent (5%) ownership interest for any one enterprise or entity relevant to sponsored project activities

The term does not include:

1. Salary, royalties, or other remuneration from the applicant institution;
2. Any ownership interests in the institution, if the institution is an applicant under the SBIR/STTR Programs;
3. Reimbursement for expenses related to service on advisory committees or review panels, or lectures and the like for public or nonprofit entities;
4. An equity interest that when aggregated for the Investigator meets both of the following tests: does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or
- 5 Salary, royalties or other payments that when aggregated for the Investigator are not expected to exceed \$10,000 over the next twelve months.

Provided, however, that the exclusions in items (1), (5) and (6) shall not apply if the compensation or transfer of an equity interest is conditioned upon a particular outcome in a sponsored research project.

Sponsored project is a research, training, service, or other type of project with identifiable objectives and/or deliverables for which external funding either is being requested or has been received.

3.0 Disclosing a Conflict of Interest/Compensated Outside Services

Unless conflicts of interest and/or compensated outside services are disclosed, they cannot be reviewed, approved, disapproved or managed. The University is not primarily concerned about dollar amounts, rather about time commitments and potential conflicts of financial interest. A disclosure in and of itself is not suggestive of any impropriety; rather, it is customary and usual and benefits both the individual and the University.

On an annual basis, and prior to submission for funding of any new project that may pose conflicts of interest or conflict due to compensated outside services, all University employees shall provide information on the nature and extent of their compensated outside services using the UNLV Conflict of Interest/Compensated Outside Services Disclosure form. They shall also disclose benefits known to a faculty member that may accrue to individuals in the employee's household, persons to whom the employee is related by blood, adoption or marriage within the third degree of consanguinity, or persons with whom the employee has substantial and continuing outside business relationships. It is the responsibility of each University employee to disclose potential conflicts of interest or compensated outside services. It is the responsibility of the University to review disclosures and determine if the disclosed interests could directly and significantly affect the employee's performance of University responsibilities and, if so, to require the management, reduction, or elimination of the conflict.

Situations that may create a conflict of interest include:

- External financial interests
- Consulting and other compensated professional/commercial activities
- Use of students/support staff on outside activities
- Use of University resources
- Clinical trials
- University dealings with entities with which University employees have an outside relationship

4.0 Review of Conflicts of Interest/Compensated Outside Services

Determination of whether a conflict of interest or excessive compensated outside services exists in a particular instance will often be a matter of judgment. The activities of University employees must be governed by thoughtful and shared consideration of individual circumstances in applying the appropriate rules. Application of administrative discretion is an integral part of the University's Conflict of Interest/Compensated Outside Services review and remediation systems.

Annual and new project disclosures of conflicts of interest and/or compensated outside services must be made to the appropriate designated official using the UNLV Conflict of

Interest/Compensated Outside Services Disclosure form. The designated official shall then determine whether a conflict of interest and/or excessive compensated outside services is present. This determination and a response to the employee must occur within 10 working days of receipt of the disclosure. Lack of response to employee after 10 working days shall constitute approval by the supervisor. If a conflict of interest and/or excessive compensated outside services appears to exist, the designated official shall attempt to negotiate a mutually acceptable course of action to manage, mitigate or alleviate the conflict of interest or conflict due to compensated outside services. If a mutually acceptable course of action cannot be negotiated, the appropriate vice president or the Provost will appoint a review committee. The review committee should include three members, two nominated by the Chair and Executive Committee of the Faculty Senate and one nominated by the appropriate vice president or the Provost. The review committee will make a recommendation to the appropriate vice president or the Provost. The decision of the appropriate vice president or the provost may be grieved in accordance with the grievance procedures described in the Bylaws of UNLV.

4.0.1 In cases where a real or potential conflict of interest exists, one of the following actions will be taken:

1. Accept the sponsored project/allow unsponsored research to proceed;
2. Not accept the sponsored project/not allow unsponsored research to proceed;
3. Require the University employee to cease participation in the conflict of interest while remaining an NSHE employee;
4. Require the University employee to cease participation in University activities related to the Conflict of Interest;
5. Accept the sponsored project or unsponsored research subject to certain conditions, e.g.:
 - a. monitoring of research by independent reviewers;
 - b. public disclosure of significant financial interest;
 - c. modification of the research plan;
 - d. disqualification from participation in all or part of the sponsored project;
 - e. divestiture of significant financial interest;
 - f. severance of relationships that create actual or potential conflicts.

4.0.2 In cases where excessive compensated outside services exists, one of the following actions will be taken:

1. Require that the University employee reduce the activity to that allowable under Title 4, Chapter 3, Section 8;
2. Require that the employee cease performance of existing outside obligations while the employee remains a NSHE employee; and/or
3. Disciplinary sanctions as set forth in Chapter 6 of the NSHE Code.

If the conflict of interest or compensated outside services involve a vice president or the Executive Vice President and Provost, the University President will review the disclosure and render a final decision.

For all conflicts of interest or compensated outside services, documentation of resolutions must be maintained with the corresponding UNLV Conflict of Interest/Compensated Outside Services Disclosure form(s).

5.0 Special Procedures for Undisclosed Conflicts of Interest/Compensated Outside Services

Alleged deliberate and/or dishonest undisclosed violations of the University's Conflict of Interest/Compensated Outside Services policy will be initially reviewed by means of an inquiry conducted by the appropriate vice president or the provost. The appropriate vice president or the provost will recommend to the President the appropriate action, if any, to be taken. The procedures set forth in Chapter 6 of the NSHE Code will govern the imposition of any disciplinary sanctions by the University.

6.0 Records

Hard copies of disclosure forms and records of all further actions related to such disclosures will be maintained in the Office of the Executive Vice President and Provost for three years following termination of the University employee, copies retained in personnel files will be maintained as required by NSHE code. Electronic records will be maintained by the Office of the Executive Vice President and Provost in a format that allows for reporting of aggregate data as required by NSHE Title 4 Chapter 3 Section 8.14.

The University will consider all disclosures and related documentation personnel documents, and will limit access to, and disclosure of, such records as provided for in the NSHE Regents Handbook and applicable UNLV personnel and privacy policies.

Approved:

David B. Ashley, President
September 29, 2008