

**Item 1.**

**Procedure for Obtaining Approval of  
Plan to Manage Conflicts of Interest**

## Procedure for Obtaining Approval of Plan to Manage Conflicts of Interest

### Related to Research Sponsored by or Board Intellectual Property Licensed to an Entity in Which an Employee Owns an Interest or Serves as an Employee, Officer or Member of the Board of Directors

*This is a procedure to obtain approval from the Office of General Counsel and your Executive Vice Chancellor for a component institution's plan for managing a particular kind of conflict of interest in a particular context. The procedure does not negate the need for an employee to fully comply with the policies of the component institution or any funding agency, such as NIH or NSF, that has its own conflict of interest regulations, or to comply with other state or federal law that applies to these or related issues.*

*Additionally, employees who desire to serve on corporate boards of directors may wish to learn more about their responsibilities to avoid conflicts of interest in that context as well.*

#### A. Scope of Procedure and Definition of Conflicts of Interest

*Conflicts of interest may arise when an employee participates in the business of or has a financial interest in a company that conducts business with the component institution in the area of the faculty member's responsibilities. This may happen in corporate sponsorship for research and in technology transfer. **This procedure addresses both of these circumstances through examination of possible conflicts between what may be best for the University and what may be best for the employee and the company where a company desires to sponsor research or license intellectual property belonging to the Board.***

*Conflicts of interest in the conduct of scientific research manifest themselves in two different, but related ways: conflicts of interest and conflicts of commitment:*

1. **Conflicts of interest** occur if the employee's significant financial interest in a sponsor or licensee causes **bias in the design, conduct or reporting of research or educational activities.**
2. **Conflicts of commitment** arise when an employee's activities on behalf of such a sponsor or licensee company **detract from the employee's teaching, research, clinical or administrative duties.**

*Either of these conflicts may lead to or be accompanied by the **inappropriate transfer of state resources or assets to the sponsor or licensee company for its exclusive benefit.** For example, a faculty member may hire an institutional employee to provide services to a*

licensee company, may operate a campus laboratory as though it were the company's laboratory, operate a business from a campus office, utilize the work of a graduate student for the sole benefit of the company, or assign University inventions to the company.

Merely owning an equity interest or participating in the business of a sponsor or licensee introduces only a potential for conflict of interest. This statement describes how to keep a **potential** conflict of interest from developing into an **actual** conflict of interest.

## B. Managing Potential Conflicts of Interest

*The Texas Legislature provides a legal mechanism for addressing potential conflicts of interest that may arise when a University employee involved in the development or creation of intellectual property acquires equity in or serves as a board member, officer, or key employee of a company that sponsors the employee's research or licenses the intellectual property. In exchange for permission to be involved with a company in this way, and if such involvement is permitted by the employee's component institution, the employee and the institution must successfully manage the potential conflict of interest to reduce or eliminate the likelihood that actual conflicts will arise.*

**The employee and the institution should take the following steps to prevent actual conflicts of interest:**

1. **Disclose** all potential conflicts of interest, both financial interests and participation in the sponsor or licensee company as an employee, officer or director **as required by Texas Education Code Section 51.912 and the Regents' Rules and Regulations, Series 90103: Equity Interests and Series 90104: Business Participation.**
2. **Identify factors such as the following that may mitigate** the likelihood of actual conflicts of interest.

Whether a sponsor or licensee is publicly or privately held can affect the employee's status as a "key" employee.

A significant difference between the research emphasis of the sponsor or licensee and that of the employee may reduce the likelihood of actual conflicts of interest.

3. **Implement effective management strategies**, such as those that follow, to minimize development of actual conflicts of interest.

Assign independent departmental personnel to monitor the employee's research activities.

Require administrative review and approval of the employee's research projects that are subject to potential conflicts of interest.

Require modification of research plans or transfer portions of research to independent researchers, if necessary, to avoid actual conflicts of interest.

Consider divestiture or withdrawal from conflicted activity if necessary to avoid actual

conflict of interest where management appears unlikely to succeed.

4. **Carefully review sponsorship and license terms.** Be aware of indications that the arrangement may not be an arm's length transaction. Look for:
  - a. grants of an equity interest to an employee that provide disproportionate compensation
    - i. relative to the standard share of royalties a faculty member might receive for technology licensed to an unrelated company, or
    - ii. relative to the services provided
  - b. licensing of inventions covering basic research that may cause the licensee to compete with the institution for grant funding
  - c. the present or near-term capacity to perform the essential functions outlined in the company's business plan
  - d. contracts-back to the institution of development work, which suggests that the technology could not have been licensed to a company in an arm's length transaction (exception: unique facilities).

### C. Failure to Manage Potential Conflicts of Interest

*If attempts to manage potential conflicts of interest fail and actual conflicts develop, in other words, if there is actual bias in the design or reporting of research, derogation of employment duties or transfer to a sponsor or licensee of state resources for the company's exclusive benefit:*

1. The employee must **disclose actual conflicts** in all oral presentations and publications resulting from the conflicted research.
2. The employee must **divest significant financial interests and/or sever the relationship** with the sponsor or licensee or withdraw from conflicted institutional activity.
3. The employee will be subject to **appropriate internal disciplinary action**.
4. The employee may be subject to **applicable civil and criminal liability**.

### D. Approval Process for Plan to Manage Potential Conflicts of Interest

*Texas Education Code Section 51.912 requires that the Board approve an employee's business participation in a licensee company; the Regents' Rules and Regulations, Series 90103: Equity Interests and Series 90104: Business Participation, delegates this authority to each component President and requires compliance with these procedures, which require that the appropriate Executive Vice Chancellor approve an employee's holding equity or participating in the business of a licensee. As a practical matter, each Executive Vice Chancellor will require review and approval by the Office of General Counsel before approving any plan.*

Thus, the institutional plan to manage conflicts requires the approval of the Office of General Counsel and Executive Vice Chancellor in accordance with the following procedures designed to assure that the important steps described above are taken in each case to minimize the

likelihood of actual conflicts of interest.

1. ***Approval and execution of the transaction document.***

Any agreement that raises potential conflicts should be approved and executed in advance, in accordance with the procedures that apply to all sponsorship, license and option agreements, subject to the additional requirement that the Office of General Counsel and Executive Vice Chancellor approve the institution's plan to manage the potential conflicts of interest. If the institution's management plan is rejected, the agreement will be cancelled until such time as a revised plan has been approved.

2. ***Employee certification.***

Employees must indicate to their institution's Chief Administrative Officer by a written letter

- a. that they have read and understood this procedure and the institutional plan
- b. that they have disclosed and will continue to disclose their financial interests and business participation as required by law
- c. whether any mitigating factors apply, and
- d. the steps they will take to reduce or eliminate the likelihood of actual conflicts of interest.

3. ***Institutional certification.***

The Chief Administrative Officer of the employee's institution must indicate to the appropriate Executive Vice Chancellor by a written letter:

- a. the component institution's and the individual's names
- b. basic details of the associated transaction, if any
- c. whether the associated agreement contains standard liability safeguards (ex: warranties and indemnifications)
- d. any previous related institution transactions
- e. all relevant dates
- f. a clear and concise summary of those aspects of the related transaction that raise potential conflicts of interest (details of equity and/or business participation in a company by a faculty member or the Board)
- g. mitigating factors, if any, and
- h. the steps the institution will take to reduce or eliminate the likelihood of actual conflicts of interest.

4. ***Approval of conflict management plan.***

Upon the review and approval of the Office of General Counsel and receipt of the employee's and institution's certification letters, the appropriate Executive Vice Chancellor will approve the plan to manage potential conflicts of interest.

5. ***Annual disclosure.***

The employee and institution must disclose potential conflicts of interest, both financial

interests and participation in the sponsor or licensee company as an employee, officer or director, in accordance with law and the Regents' *Rules*.

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