

Board of Regents Policy 3.2.8 begins at the bottom of this page. Please refer to <http://www.nebraska.edu/docs/board/RegentPolicies.pdf> for the full policy document.

Self-Insurance shall promptly notify the University's Director of Risk Management of:

- 1) any occurrence the commissioned law enforcement officer has reason to believe may result in a claim for benefits;
 - 2) any communication the commissioned law enforcement officer receives concerning a pending or threatened criminal charge or grand jury proceeding which may result in a claim for benefits; and
 - 3) any claim for benefits.
- (b) Notice must be confirmed in writing within thirty (30) days on a prescribed claim form provided by the University's Director of Risk Management to be effective.
- (c) The University's Director of Risk Management shall make a decision on any claim for benefits promptly, and not later than thirty (30) days after the Director of Risk Management receives the claim, unless special circumstances require an extension of time for processing. In such a case, a decision shall be made as soon as possible, but not later than one hundred twenty (120) days after receipt of the claim. If the Director of Risk Management denies a claim, in whole or in part, the Director of Risk Management shall send to the claimant and the University's Vice President for Business and Finance a written notice setting forth:
- 1) the specific reasons for the denial;
 - 2) specific reference to pertinent provisions of the University's Self-Insurance Program on which denial is based;
 - 3) If applicable, a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - 4) an explanation of the appeal procedure whereby the claimant may seek review of the Risk Manager's decision.
- (d) Within thirty (30) days of the date upon which the claimant is first notified of any decision of the University's Director of Risk Management to deny the claimant's claim, the claimant may appeal the decision of the Risk Manager by submitting a written appeal to the University's Vice President for Business and Finance. The Vice President for Business and Finance shall notify the claimant of his or her decision in writing within forty-five (45) days of receipt of the appeal. The Vice President's decision on appeal shall state specific reasons for the decision with references to pertinent provisions of the University's General Self-Insurance Program. The decision of the Vice President for Business and Finance shall be final, and shall not be subject to further appeal or review.

RP-3.2.8 Conflict of Interest and Conflict of Commitment

1. Introduction

University relations with industry, government agencies, individuals, and other enterprises outside the University constitute a complex network of interactions. These interactions have directed attention to potential conflicts of values and interests between these entities and academia. Conflict of Interest is addressed in Section 3.8 of the *Bylaws of the Board of Regents* as follows:

3.8 Conflict of Interest. No employee of the University shall engage in any activity that in any way conflicts with duties and responsibilities at the University of Nebraska. The Board of Regents has adopted Regents Policy 3.2.8 and authorized the implementation of related policies and directives to properly avoid, disclose and manage potential conflicts of interest.

In addition to Section 3.8 of the Bylaws, Nebraska statutes relating to conflict of interest and nepotism apply to all public officials and employees of the University, including the provisions of §49-14,101.01 of the Revised Statutes of Nebraska.¹

Furthermore, federal funding agencies require that the University establish safeguards to prevent employees or consultants from using their positions for purposes which are motivated by (or even give appearance of) a drive for private financial gain either for themselves or family members.²

Responsibility for assurance of compliance with this policy rests with the President and Chancellor of each campus. The Chancellors shall submit an annual report to the President detailing the compliance policies, procedures and management activities at their campus.

2. University-Wide Conflict of Interest Principles

Campus conflict of interest policies will vary according to the unique roles and needs of each campus. However, each campus policy must ensure that broad University-wide principles are followed, including:

- 1) Prospects of financial gain must not unduly influence faculty and the University with regard to commercially imminent, product oriented research programs versus fulfilling the University's objectives of educating students, advancing basic knowledge and serving Nebraskans through the development and application of knowledge that enables them to develop better lives, stronger communities and genuine economic opportunity.
- 2) The University must avoid situations where the possibilities for personal gain for the Covered Person may be judged to be so significant that it is unreasonable to expect the Covered Person to exercise the objectivity necessary for public trust in the University and the rigor of its research.
- 3) Research agreements should encourage the free exchange of ideas and the sharing of research results regardless of the sponsoring entity. Some constraints may be required to protect proprietary information or intellectual property.
- 4) To the extent practicable and consistent with applicable law, the University must be appropriately compensated for private, commercial use of the public property under its stewardship.

Underlying these principles is the recognition that the University of Nebraska is a public institution with a mission of serving the people of Nebraska through research, teaching and service.

¹ "A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated." and " A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain. ... "

² Including *Public Health Service, National Institute of Health and National Science Foundation* regulations and guidelines (42 CFR Part 50, Subpart F and 45 CFR Part 94.1), *Department of Education* regulations (34 CFR Part 75.524, 34 CFR Part 75.525 and 34 CFR Part 74.42), and *FDA* regulations (21 CFR Part 54).

3. Annual Report

Annually, each campus shall submit a written conflict of interest report to the President which includes at least the following information:

- 1) The number of conflicts disclosed, by appropriate academic unit.
- 2) A summary of the nature of the conflicts.³
- 3) The number of conflicts being managed through written plans, by college.
- 4) The number of conflicts eliminated, by college.
- 5) Other material or information related to the management of conflicts of interest at the campus.

4. Personnel Affected by Conflict of Interest and Conflict of Commitment Policy

Covered Person shall mean:

- 1) University administrative officers and employees, specifically including any University employees with delegated signature, purchasing or contracting authority on behalf of the University;
- 2) University employees and faculty engaged in outside employment or other activities specified in this policy (tech transfer/use of University facilities or equipment) that may create a *Conflict of Interest*; and
- 3) Sponsored Research investigators, including University employees, faculty, staff and support personnel (managerial/professional and office/service positions), volunteers, trainees, students, contractors and other persons under the direct control of the University of Nebraska, whether paid by the University of Nebraska or not, who participate in *Sponsored Research* as defined in Section 6 of this policy 3.2.8.⁴

Conflict of Interest shall mean situations when a *Covered Person's* direct or indirect personal financial interests may compromise, or have the appearance of compromising, the *Covered Person's* professional judgment or behavior in carrying out his or her obligations to the University of Nebraska. This includes indirect personal financial interests of a *Covered Person* that may be obtained through third parties such as a *Covered Person's Immediate Family*, business relationships, fiduciary relationships, or investments.

Immediate family shall mean an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption of the *Covered Person*.

5. Individuals and Organizations Responsible for Administration of Conflict of Interest and Conflict of Commitment Policy

At the University of Nebraska, all reporting of potential *Conflicts of Interest* should be undertaken with the goal of full disclosure. The President and Chancellors of each campus shall develop and implement a disclosure process and supporting procedures consistent with the principles set forth in this Policy, covering, at a minimum, sponsored programs administration, institutional review boards, any office of technology transfer, and any other responsible campus administrative officers. The Chancellors shall be

³ Conflicts may be identified according to basic categories, for example, conflicts arising from ownership of stock, family relationships, potential undue influence, and the like.

⁴ The term *Covered Person* includes the definition of an "Investigator" under NIH guidelines, specifically "the Principal Investigator and any other person who is responsible for the design, conduct, or reporting of research funded by the NIH, or proposed for such funding. The definition includes contractors or collaborators, as well as the Investigator's spouse and dependent children." See *Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought* (42 CFR Part 50, Subpart F, grants and 45 CFR Part 94, contracts).

responsible for overseeing their campus' reporting process and must designate an administrative officer who will be in charge of developing more specific written procedures for enforcing the policy. Each Chancellor shall submit their campus' processes and procedures to the President for review and approval.

The procedures for disclosure at each institution must, at a minimum, include the following:

- 1) Annual disclosures by *Covered Persons* who may have potential *Conflicts of Interest*.
- 2) A description of the process for developing, implementing, and overseeing conflict management plans, including a detailed process for managing and/or eliminating potential Conflicts of Interest.
- 3) A description of procedures for ensuring coordination among all University organizations with a role in oversight of conflicts.
- 4) A description of the process by which a Covered Person may address concerns regarding a Conflict of Interest situation or the management thereof.
- 5) A description of how:
 - o Disclosures will be reviewed and retained, and the level of activity of each college on the campus will be reported to the President pursuant to paragraph 10 of this policy;
 - o Responsible campus officials are to review and manage potential Conflicts of Interest;
 - o The campus will provide related training and advice about Conflict of Interest issues;
 - o The campuses will review and validate their program on a regular basis;
 - o The campus will make its implementation procedures for this policy available publicly; and
 - o The institution will enforce this policy and provide sanctions when necessary.

6. Conflicts of Interest Involving Sponsored Research

Research is basic to the University's teaching and service missions. Good teaching and learning depend upon research. Likewise, through its research, teaching, and service activities, the University's resources can best be brought to bear on public issues requiring objective, systematic study. Research forms an inherent part of departmental and collegiate missions, and brings recognition to the University and its faculty. All forms of research, which are within departmental and collegiate missions, and which maintain the high quality characteristic of the University, are appropriate to the University's open environment. Similarly, University teaching and service activities have potential for commercial use and development.

Sponsored Research means research, training, and instructional projects performed by Covered Persons using any University space, materials, equipment or property that involves funds, materials or other compensation from sources outside the University through a grant or contract that obligates the University to a specified statement of work, sets forth binding financial terms in the form of a budget or up-front payment, or contains terms related to ownership of and rights to use intellectual property developed thereunder. Sponsored Research is a vital endeavor of the University; it allows faculty the means to pursue excellence in their research and scholarly activity, it expands opportunities for graduate and undergraduate student participation in research, it enhances the quality of University research facilities through public and private support, and it helps facilitate the commercialization of research and technology to benefit the University and Nebraska. The University encourages its faculty and staff to engage in both sponsored and non-sponsored research recognizing that compliance with this policy can help assure that appropriate standards of accountability are met and extramural considerations do not hinder the dissemination or commercialization of research.

Each campus shall establish its own Sponsored Research application approval process, including applicable internal or external peer review systems and implementing best practices for approving federally, publicly and privately sponsored research projects. The Chancellor shall be responsible for overseeing the research approval process and must designate an administrative officer who will be in charge of developing more specific written procedures for implementing the policy. The procedures for Sponsored Research approval at each campus must at a minimum include procedures for disclosing, identifying, reviewing, managing and reporting conflicts and potential conflicts that arise with regard to Sponsored Research on their campus pursuant to Article 3 of this policy.

7. Openness of Research and Publication of Results

The traditions of free exchange of ideas and prompt dissemination of knowledge are fundamental to the University's mission and should govern all research, teaching, and service activities conducted by University faculty, staff and students. The University is committed to an open teaching and research environment, which ensures free faculty and student exchange of ideas, thereby contributing to the advancement of knowledge in all disciplines. As far as possible, the acceptance of support external to the University should not create situations which curtail open discussion of the research among colleagues and students.

Industry typically treats the products of its research in a very confidential manner. On occasion, industry expects project participants to maintain the same degree of confidentiality with sponsored research. It is important to note that openness, freedom of discussion, and freedom to publish go to the very core of the University. Nonetheless, there are certain legitimate needs for confidentiality on the part of industry that must be met by Sponsored Research investigators. Data received from an industry sponsor and marked "confidential" may be kept in a confidential status for a stated period of time. Also, it is prudent to recognize the need to maintain the confidential status of the results of the project for a period of time sufficient to determine patentability and filing of patent applications or as agreed upon in an agreement between the sponsor and the University. When appropriate, the University may enter into confidential agreements to protect proprietary information, where this is deemed necessary, either through direct agreement with an industrial sponsor or through an agreement between the sponsor and a University employee.

The campus official responsible for administration of research or other campus official designated by the Chancellor must ensure that all individuals who participate in industry-sponsored research projects are fully informed in writing of the ownership and disposition of inventions and requirements of confidentiality regarding research results and other confidential information provided by the sponsors of such projects.

Research conducted by faculty under industry or other commercial sponsorship must, as far as possible, maintain the University's open teaching, research, and service environment.

The campus official responsible for administration of research or Chancellor's designee must review and approve any new, proposed, or ongoing faculty-industry interactions as these interactions might compromise the University's open teaching and research environment. The appropriate department chair(s) or director(s), dean(s), and in rare circumstances, the individual designated to perform the complete administrative review as described in Section 1--shall aid in this process and shall seek to resolve all potential problems prior to the approval of such interaction.

The campus official responsible for administration of research or Chancellor's designee shall from time to time provide current information to the department chairs, deans, directors and faculty pertinent information for timely reporting of concerns regarding violation of the *Conflict of Interest* and Conflict of Commitment policy.

Faculty must have the right to disseminate their research results, indeed are obligated to do so. The University discourages individual faculty from agreeing to forego this basic right. Likewise, the University will not unilaterally forego this right on behalf of its faculty, staff and students. However, the University and faculty may accept reasonable delays in submission of new findings for publication or other release of information to enable sponsors or the University to obtain proprietary or patent protection, for example. In

special circumstances to be determined by the University, a researcher may waive his or her right to disseminate the results of his or her research and elect to enter an agreement to maintain the confidentiality of proprietary research for specified periods of time.⁵

The campus official responsible for administration of research or Chancellor's designee shall work with faculty engaged in industry-sponsored projects to provide written notification to support personnel and students involved in these projects, describing all contract and grant terms affecting them, including the possibility of delays in publication caused by the need of the sponsor to review manuscripts or any other obligations of confidentiality. Graduate students must not be assigned to thesis research topics which might be affected by confidential agreements. The appropriate campus official or Chancellor's designee may authorize exceptions where appropriate.

8. Outside Employment and Conflicts of Commitment

The University not only permits but expressly encourages faculty to pursue outside professional activities including interactions with industry, with or without compensation, which will enrich a faculty member's academic contributions to the University. Consulting can expose faculty to research problems and perspectives which may enrich faculty teaching, research, extension, and service backgrounds. However, faculty and administration must be sensitive that such interactions could cause *Conflicts of Interest* and must ensure that *Covered Persons* do not make unnecessary or inappropriate commitments of their time or expertise which can adversely affect the University and its mission. A conflict of commitment must be disclosed and managed when it constitutes a *Conflict of Interest* for a *Covered Person*.

The assumption that *Covered Persons* will devote their time and effort to the University in proportion to their appointments--that full-time appointment connotes full-time commitment of time, effort, and expertise to the University--is inherent in University employment. Outside consulting activities, often acceptable in themselves, can interfere with a University employee's paramount obligations to the University by placing significant, competing demands upon the time and energy of a *Covered Person* with the potential for the neglect of instructional, research and other employment obligations. In some circumstances, a *Covered Person's* proposed outside activities may directly conflict with the objective of assignments within the University.

The University, through an outside employment policy enacted by the Board of Regents, seeks to minimize the potential for conflict of commitment by several mechanisms. The time that may be devoted to outside activity is normally limited to two working days per month; greater time commitments require specific approval of the Board of Regents. (For practical reasons, faculty are given considerable freedom in the scheduling of any outside activities.) In addition, the University must examine the application of an employee's expertise to proposed educational, industrial, or other consulting activities to assure that any *Conflict of Interest* and/or conflict of commitment is properly disclosed and managed. Hence, the University requires prior disclosure of proposed consulting, extramural teaching, or other activities to the department chair and the prior approval of the college dean and campus administration. Such disclosure may be made by completing the appropriate campus form for disclosure of outside employment and may require the provision of additional documentation to the chair, dean, or other administrator.

In certain other circumstances, the specific approval of the Board of Regents may be required. The relevant policy of the Board of Regents is set forth in Section 3.4.5 of the *Bylaws of Board of Regents*.

Outside Activity and Employment. As University-industry relationships increase with a growing desire for consultantships and other professional activities outside the University, University employees must continue to observe the University policy on outside employment embodied in Section 3.4.5 of the *Bylaws of the Board of Regents*. In addition, University employees must observe the Board of Regents policy on Conflict of Interest stated in Section 3.8 of the *Bylaws of the Board of Regents*. Accordingly, each campus shall develop appropriate forms for employees to disclose 1) potential *Conflicts of Interest*, and 2) outside employment in order for review, documentation, approval and management of *Conflicts of Interest* and outside employment.

⁵ An example of such a circumstance would be research performed pursuant to a contract with an agency of the federal government requiring security clearance.

Department chairpersons, department heads, deans, and directors have primary responsibility to review the specific nature of each proposed outside professional activity within their respective areas of administrative responsibility and to deny approval to any such activity which would interfere with the normal University duties of the employee involved and to require proper disclosure and management of any *Conflict of Interest*.

It is impossible to anticipate all questions which may arise in connection with the application of Section 3.4.5 of the *Bylaws* to the varied outside professional activities of employees. However, several general guidelines are set out below to assist in the administration of this policy:

- 1) Section 3.4.5 of the *Bylaws* does not apply to Office and Service staff.
- 2) Section 3.4.5(a) of the *Bylaws* requires Regental approval of outside professional activities where the employees will accept retainer fees or other remuneration on a permanent or yearly basis as a professional consultant. The key consideration in determining whether there will be acceptance of a retainer fee or remuneration on a permanent yearly basis is the nature of the professional business relationship between the employee and his or her client or patient. If this business relationship is one where the employee is obligated at the beginning of the professional relationship with a client or patient to provide professional services over a period of one year or longer, then approval by the Board of Regents is required.
- 3) In addition to obtaining prior approval of the department chair and campus administrator, Section 3.4.5(b) of the *Bylaws* requires Regental approval of outside professional activity requiring more than an average of two days per month during the period of the employee's full-time employment. The Board of Regents has interpreted this language to mean two days per month during the assigned work week. For this reason, Regental approval will only be required when an employee's outside professional activities will prevent the performance of his or her assigned duties at the University more than an average of two days per month during the period of full-time employment.
- 4) Section 3.4.5 of the *Bylaws* requires Regental approval of outside professional activity involving the charging of fees for work performed in University buildings with University equipment and materials. The President and Chancellors are authorized to develop specific policies with regard to the charging of fees for work performed in University buildings with University equipment and materials.
- 5) Section 3.4.5 of the *Bylaws* does not require individual approval of each separate client or patient relationship for professionals such as accountants, engineers, architects, lawyers, psychologists, therapists, etc. It is sufficient that the nature of the outside professional activity be generally described so that appropriate evaluation may be conducted regarding potential interference with University duties, *Conflict of Interest*, and conflict of commitment. So long as none of the circumstances requiring Regental approval under subparagraphs (a), (b), (c), and (d) of Section 3.4.5 of the *Bylaws* exist, no further information need be provided by the employees, and the professional activity may be approved by the chancellor upon the recommendation of the appropriate dean or director.
- 6) Activities for a professional organization with which an employee is associated do not constitute the type of professional activity coming within the scope of Section 3.4.5 of the *Bylaws* unless a professional service is provided to the organization for which the employees is paid a professional fee which is commensurate with the actual value of the professional service provided.

The foregoing should not be construed to relieve any employee of complying with applicable policies or regulations of the department, college, division, campus, or University with regard to time one is allowed away from regular University duties.

University employees proposing outside employment or a consulting relationship of any nature pursuant to Section 3.4.5 of the *Bylaws* are required to complete the appropriate campus form for disclosure of outside employment.

Furthermore, consistent with the foregoing policy statement regarding conflicts of commitment and the effect such conflicts can have on a faculty member's research programs and the duties faculty members owe the University, University employees proposing outside employment or a consulting relationship with a third party shall disclose to the University any: i) confidentiality or non-disclosure agreements, ii) non-compete agreements or any agreement containing a non-compete clause, iii) assignments of intellectual property rights to the contracting party, and iv) involvement with commercial or educational enterprises where the name of the University may be used for commercial gain to the Chancellor or the Chancellor's designee. Although agreements of this type can be problematic, the University shall endeavor to promptly review such agreements and resolve any potential conflict of commitment to allow the University employee to perform the proposed outside employment or consulting while maintaining the integrity of their research projects and commitments to the University.

9. Conflicts of Interest Involving Technology Transfer

University projects have resulted in the creation of new Nebraska businesses which have transferred research results into products and services and which have contributed to the State's economy. Certain research discoveries lend themselves to commercialization by starting new ventures through the University or through faculty rather than the traditional licensing to existing companies. Moreover, this means of commercializing discoveries may be the best, or in some instances the only, means to transfer such new technology. The University recognizes this as an acceptable method of commercializing discoveries when it is in the best interests of the University, the State, and the inventor and is the most effective means to transfer such technology.

In establishing new companies to commercialize University technology, the University may accept equity positions or combinations of equity and future royalties in return for licensing the technology. This is an acceptable University activity and is an integral part of the technology transfer program. However, in such situations, reasonable limits on the University's involvement with respect to administrative time and the amount of equity taken must be observed. University technology transfer activities shall be governed by Section 3.10 of the *Bylaws* and Section 4.4.2 of the *Policies*. Such oversight will enable the University to be aware of and take steps to prevent or manage potential *Conflicts of Interest* which may arise, involving, among other things, favoritism in future dealings with the same company, discrimination against its competitors, or the use of public funds for private gain. Accordingly, University direction of the company must be limited in time, and the amount of equity taken must be less than controlling. The Board of Regents has separately authorized and delegated authority to the University Technology Development Corporation (UTDC), and nothing in this policy is intended to limit the authority of UTDC as it relates to properly managing or preventing conflicts of interest or otherwise.

Conflict situations also apply to any profit- or nonprofit-affiliated private entities established by the University or one of its employees. Therefore, in the University's relations with all such entities, the *Conflict of Interest* policy must be followed.

Where University technology is transferred in return for an equity position, or royalties, or projects are to be performed in exchange for an equity position, the affected University employees must fully disclose such proposals, and a suitable arrangement that reflects the Regents Policy must be concluded prior to approval of the proposal.

For-profit entities have been formed specifically to fund research and development, such as research and development limited partnerships. Such entities solicit investors from members of the public. There is the possibility that prospective investors may be induced to invest by what appears to be University

involvement in the funding entity or by unrealistic expectations of the outcome of the projects. In either event, the name of the University could be unfairly traded upon. Therefore, care must be taken that the investor solicitation is consistent with the potential outcome of the research and the policy on the use of the University's name.

Where appropriate, the University may accept equity in a company as complete or partial payment for transferring University technology to the company for commercialization. Only the Board of Regents may approve acceptance of equity in a company upon the recommendation of the President.

The University may designate individual(s) to hold membership on the board of directors of a company in which the University holds equity.

University faculty, administrators, or other members of the University community holding any such board of directors membership shall oppose or absent themselves, as appropriate, from any funding decisions or other decisions relating to the University which:

- 1) violates or is contrary to any law or University policy or procedure in regard to grants or contracts;
- 2) would constitute a Conflict of Interest with such person's University office of employment; or
- 3) involves improper use of University (public) funds.

When external entities raise funds for University projects through any form of investment offerings, University personnel must scrupulously avoid the endorsement of any such offering or any statement of potential research results. The University's prior written consent must be obtained to use its name in connection with advertising or promotion of any investment offering.

The past history of funding of University research or other projects by any company or firm shall not have any bearing on purchasing decisions made by the University of Nebraska.

10. Institutional Conflicts of Interest

An *Institutional Conflict of Interest* may occur when the University or a *Covered Person* in a senior administrative position has a financial interest in a commercial entity that itself has an interest in a University research project, including potential conflicts with equity/ownership interests or royalty arrangements. Each campus shall develop and establish processes and procedures for review of institutional conflicts involving technology transfer or other commercial activities. This process must at a minimum include:

- 1) Procedures for identifying and overseeing institutional *Conflicts of Interest*;
- 2) Principles and strategies for managing institutional Conflicts of Interest; and
- 3) Principles and strategies for institutional management of equity.

Each Chancellor shall submit their campus' processes and procedures for review of institutional *Conflicts of Interest* to the President for review and approval.

11. Appeal of Administrative Decisions

Each campus shall assure that an appeal mechanism is in place to allow *Covered Persons* to appeal an adverse decision relating to this policy.

Reference: BRUN, Minutes, 58, pp. 11-12, (February 13, 1993).
BRUN, Minutes, 60, p. 20, (March 24, 1995).
BRUN, Minutes, 69, pp. 16-30, (March 5, 2010).