

### **3.21 Conflicts of Interest and Commitment in Sponsored Activities**

Actual or perceived conflicts of interest or commitment that arise from Sponsored Activities are of special concern because they almost always involve or implicate entities outside of the university community (and thus are more prone to public scrutiny), are frequently governed not only by university policies but also by governmental conflict-of-interest regulations and are subject to special disclosure requirements administered by the Vice President for Research, Graduate Studies and International Programs. The principles, definitions and policy statements set forth above in Sections 3.19 and 3.20 apply also to this section 3.21. Specific guidance on conflicts of interest in Sponsored Activities is set forth below.

#### **3.21.20 Conflict Situations in Sponsored Activities**

##### **3.21.21 Conflicts in Sponsored Activities that Arise from Financial Interests**

Actual or perceived conflicts of interest or commitment in Sponsored Activities generally arise when an investigator or family member has a significant financial interest in, or a consulting arrangement with, a private business concern or other organization that is or may be affected by the sponsored activity. Some examples of this kind of conflict situation include, but are not limited to:

- Engaging for sponsored research a business firm in which the investigator or family member involved in the research project has a significant financial interest.
- Purchasing major equipment, instruments, materials or other items for sponsored research from a private firm in which the investigator involved in the research has a significant financial interest.
- Engaging a private consulting firm in connection with sponsored research where the investigator involved in such research has a consulting arrangement with or significant financial interest in a competing consulting firm.
- Acceptance by an investigator involved in a sponsored research project of gratuities or special favors from a firm or other organization with which the university does business in connection with the sponsored research.
- Utilization of privileged information acquired by an investigator in connection with sponsored research for personal gain, or to economically benefit a business concern in which the investigator or family member has a significant financial interest.
- Sponsorship of research by a business firm in which an investigator involved in the research has a significant financial interest.
- In the absence of disclosure and express sponsor approval, employment of, or an offer of employment to, a family member of an investigator involved in sponsored research by either the sponsor of, or an organization engaged in, the research project.
- Receipt by a family member of an investigator involved in a sponsored activity of a scholarship, fellowship, work/study benefit, or other financial aid, which is funded by or through the sponsored activity.

##### **3.21.22 Conflicts in Sponsored Activities that Arise from Personal Interest**

An actual or perceived conflict of interest or commitment may also arise from situations that may have a significant impact on an investigator involved in sponsored research, even though the situation does not involve a significant financial interest. These non-financial conflict situations frequently involve personal interests or relationships that are or may be affected by Sponsored Activities. Some examples are:

- An investigator's involvement in a sponsored activity where the investigator or a family member of the investigator acts as a non-paid advisor to, or board member of, the sponsoring entity.
- An investigator's involvement in a sponsored activity in which a family member is engaged as a human subject, student researcher or other non-paid participant.
- An investigator's involvement in a sponsored activity that includes testing and validation of new technology developed by a family member of the investigator.

### **3.21.24 Other Conflict Situations in Sponsored Activities**

It is important to realize that any number of other kinds of conflict situations can arise in the context of sponsored projects, some of which may be undeterminable at the outset of the project. Investigators involved in sponsored activities must be cognizant of the need to monitor project developments in order to identify potential or perceived conflict situations as they arise and to disclose them or facilitate their disclosure as soon as possible. Examples of other kinds of conflict situations might include:

- An investigator's involvement in a sponsored research project becomes so extensive during the course of the project that other obligations to the university are neglected, thus creating a conflict of commitment.
- An investigator's responsibility for multi-disciplinary sponsored research project gives rise to nepotism issues when a family member employed in a different university department falls under the investigator's supervisory authority in the context of the project and no disclosure of and express sponsor approval for such arrangement is in place.
- An investigator's loyalty to a family member (*See* section 3.20.23), close personal friend or a professional associate employed elsewhere results in sponsored research being conducted elsewhere which could and ordinarily would be conducted within the university, to the disadvantage of the university and its legitimate interests.

### **3.21.25 Governmental Conflict of Interest Regulations Concerning Sponsored Activities**

Any research or other project that is sponsored or funded by a governmental agency is likely to be subject to agency regulations or guidelines covering conflicts of interest as well as university policies. The federal Office of Management and Budget has promulgated rules, applicable to all federally funded grants and agreements with institutions of higher education, which define conflicts of interest and the financial thresholds applicable to them and which require grant recipients to maintain written standards of conduct governing real or apparent conflicts of interest. These rules are found in OMB Circular No. A-110, Sec. 42. Most federal departments and independent agencies have formally adopted these rules and codified them in various sections of the Code of Federal Regulations. A few agencies have adopted supplementary conflict of interest guidelines applicable to their own grant administration procedures. Two agencies, the National Science Foundation and the Public Health Service, have established specific financial disclosure requirements and disclosure review and conflict of interest management procedures applicable to grants from those agencies. The guidelines and requirements set forth in this section 3.21 are intended to implement and comply with these federal conflict of interest rules, so that compliance with this university policy will generally assure compliance with governmental requirements. Investigators are urged, however, to familiarize themselves with the conflict of interest rules adopted by agencies sponsoring their research activities.

### **3.21.26 Disclosure Procedures for Sponsored Activities**

Each person engaged in an area of sponsored research and covered by this policy is responsible for determining whether any actual, potential or apparent conflict of interest or commitment exists. The principal investigator of each specific sponsored activity, in consultation with all other participants in the activity, is responsible for determining whether any possible conflicts exist with respect to such activity and for so indicating on the New Mexico State University Proposal Award Form submitted to the Office of the Vice President for Research, Graduate

Studies and International Programs at the time approval for such activity is sought. If any possible conflicts are identified, the person or persons having the conflicts should attempt to resolve them in advance of submitting the activity proposal for review and approval, but in any event must concurrently disclose them for review by the Conflict of Interest Committee during the pre-award process. Disclosure shall be made by submitting the individual's current annual "Conflict of Interest Disclosure" form with the approval documentation provided to the Office of the Vice President for Research, Graduate Studies and International Programs. If a new conflict of interest or commitment arises during the course of sponsored work, the person having such conflict must submit an updated disclosure form. The Office of the Vice President for Research, Graduate Studies and International Programs shall furnish such disclosure forms to the Committee on Conflicts of Interest in Sponsored Activities.

### **3.21.27 Review and Resolution of Conflicts of Interest Relating to Sponsored Activities**

The Committee on Conflicts of Interest in Sponsored Activities shall be a standing committee consisting of the vice president for research, graduate studies and international programs, the director of a college/unit research center or institute director designated by the vice president for research, graduate studies and international programs and three faculty members appointed by the vice president for research, graduate studies and international programs and approved by the Faculty Senate. One member of the committee shall not be involved in sponsored research. The Committee on Conflicts of Interest in Sponsored Activities shall meet as necessary to review all disclosure statements and decide in each instance whether:

1. There is no potential conflict of interest; or
2. There was a conflict of interest, which has since been resolved; or
3. There is a conflict of interest that has not been resolved.

In making these determinations, the committee, at its discretion and under conditions of confidentiality, may seek the advice of additional persons. The committee will exercise care at all times to ensure confidentiality and to protect the safety and privacy of persons involved in or affected by the review. If the committee determines that there is an unresolved conflict of interest:

1. The appropriate dean, vice president or vice provost will be notified;
2. The committee will work with the affected principal investigator and other key personnel, including affected departmental personnel, to determine how the conflict should be managed so the sponsored activity can proceed if at all possible; and
3. Acceptance of an award for the affected sponsored activity will be delayed pending resolution of the conflict.

In order to effectively manage or remedy a conflict of interest, the committee may impose conditions or restrictions to control, reduce or eliminate the possibility that the conflict will affect the objectivity of the sponsored research or other activity. Examples of conflict of interest management options include:

- Public disclosure of the conflict.
- Divestiture of conflicting financial interests or placement in a blind trust.
- Escrow of a conflicting equity interest until appropriate triggering conditions are met.
- Disqualification of the conflicted individual from management, supervisory or other affected responsibilities for the sponsored activity.
- Prohibition of the conflicted individual's involvement in affected aspects of the research or other activity.
- Severance of business relationships that create the conflict.
- Monitoring of research or other affected activities by independent reviewers.

### **3.21.28 Appeals from Decision Concerning Conflicts of Interest Arising from Sponsored Activities**

A sponsored activity may not be accepted in the event that the committee is unable to fashion a remedy for a specific conflict of interest and the conflict remains unresolved. In such case, the Committee on Conflicts of Interest in Sponsored Activities will notify the appropriate dean, vice president or vice provost. Appeal of the decision to not accept an award or to accept it subject to conditions in furtherance of a specific management plan, may be made to the executive vice president and provost, who will consult with the principal investigator and the Committee on Conflicts of Interest in Sponsored Activities prior to making a final determination. A final determination on appeal of a conflict of interest decision will be made within 30 days of the date the appeal was taken. A final determination on appeal shall be achieved before the university accepts a sponsored activity.

### **3.21.29 Retention of Records Concerning Conflicts of Interest in Sponsored Activities**

The Office of the Vice President for Research, Graduate Studies and International Programs will maintain records of all conflict of interest disclosures and all actions taken with respect to such disclosures for either:

1. A period of three years following the final close-out of the affected sponsored activity or the resolution of any governmental action relating to such sponsored activity or the underlying conflict of interest, whichever comes later; or
2. As otherwise provided by law. The original disclosure forms will be retained in the individual's official personnel file.

## **3.22 Conflicts of Interest Arising from Consensual Relationships**

Policy Statement: It is the policy of the university that employees with direct teaching, supervisory, advisory or evaluative responsibility over other employees, students and/or student employees recognize and respect the ethical and professional boundaries that must exist in such situations. Consensual relationships can create conflicts of interest that impair the integrity of academic and employment decisions. Such relationships also contain the potential for exploitation of the subordinate employee, student or student employee and the possible professional or academic disadvantage of third parties, and can subject both the university and individuals to liability. Therefore, the university strongly discourages consensual relationships between supervisors and subordinates, teachers and students, and advisors and students. Should such a relationship develop, the faculty member, supervisor or advisor has the obligation to disclose its existence to an immediate supervisor and cooperate in making alternative arrangements for the supervision, evaluation, teaching, grading or advising of the employee, student or student employee.

Scope: This policy applies to all NMSU employees including faculty, staff and student employees.

Definitions:

- A consensual relationship is a mutually acceptable, romantic and/or sexual relationship.
- A conflict of interest arises when an individual with the authority and responsibility to evaluate the work or performance of an employee, student or student employee acquiesces or engages in a consensual relationship with the employee or student.
- An employee is defined as any individual, whether paid or not, who is listed and active on the university's Human Resources Management System. This includes all faculty, staff and student employees to include affiliated faculty and associated employees.

Reporting Responsibility: In the event a conflict of interest exists arising from a consensual relationship, the individual in the supervisory, teaching or advisory position shall immediately notify the supervisor about the relationship and cooperate with the supervisor in making arrangements necessary to resolve the conflict of interest. Notification of the consensual relationship shall be provided in writing and signed by both parties involved.

Supervisor Responsibility: A supervisor who is notified shall take immediate steps to alter the conditions that create the conflict of interest caused by the relationship. In most instances, this will be accomplished by providing an alternative means for the supervision, teaching, advising and/or evaluation of the subordinate employee, student or

student employee. A supervisor who becomes aware of a consensual relationship that has not been declared, shall investigate and take action as appropriate and required by this policy. Both parties in the relationship and the supervisor shall sign the resolution. All documentation will be maintained in a departmental file.

Failure to Report or Cooperate: Employees in positions of authority who enter into or continue consensual relationships without reporting them, or who fail to cooperate in efforts to eliminate the conflict of interest resulting from a consensual relationship may be subject to disciplinary action, which may include counseling, letters of warning, reprimand, suspension or termination. In the event that a complaint of sexual harassment or sexual misconduct is reported by the subordinate party regarding an unreported relationship, there will be no presumption that the relationship was consensual in nature.

Grievance of Disciplinary Actions: Disciplinary actions imposed for violations of this policy may be grieved or appealed by the individual who is disciplined pursuant to existing university policies and procedures.

For Assistance: Questions regarding this policy should be directed to the assistant vice president for human resource services.