

Conflicts of Interest and Conflicts of Commitment Unit Implementation Policies for Staff

University of Michigan

Institute of Continuing Legal Education (ICLE)

CONFLICTS OF INTEREST AND CONFLICTS OF COMMITMENT

November 2007

Introduction

SPG 201.65-1 requires the deans of the schools or colleges and the directors of administrative units to articulate and disseminate implementation policies that apply to faculty and/or staff within those units. The implementation policy and procedures for ICLE are provided below. This policy and its procedures apply to all full-time staff, whether permanent or temporary, and to all permanent part-time staff in the unit. The University expects all staff to be familiar with the contents of SPG 201.65-1 and with the applicable set of unit implementation procedures.

A. Statement of Principles for School/College/Administrative Unit's Policy

The policy section of SPG 201.65-1 outlines a set of key principles relevant to conflicts of interest and conflicts of commitment, including the principles stated below.

All staff members are to act with honesty, integrity, and in the best interest of the University when performing their duties, and to abide by the highest standards of research, educational, professional, and fiscal conduct. Outside activities should not interfere with an individual's University obligations. Staff must not use their official University positions or influence to further gain or advancement for themselves, parents, siblings, spouse or partner, children, dependent relatives, or other personal associates, at the expense of the University. In accordance with its mission, however, the University of Michigan allows and encourages staff to engage in outside activities and relationships that enhance the mission of the University. As a result, potential conflicts of interest and commitment are inevitable, but these potential conflicts are not necessarily problematic. Rather, the essential point is that faculty and staff must disclose these potential conflicts of interest so that they can be evaluated and, if necessary, managed or eliminated.

* When implementing SPG 201.65-1, academic and administrative units must also consider both particular rules of conduct within the University and rules that govern outside activities applicable to the staff of ICLE. These include:

- Regents' Bylaw 5.13, related to governmental elective/appointed service
<http://www.umich.edu/%7Eregents/bylaws/bylaws05b.html#4>;

- SPG 201.12, related to misconduct and discipline;
- SPG 201.23, related to hiring of relatives or those with a close personal relationship; and
- SPG 201.85, related to work performed for other University units.

The specific definitions for a *potential conflict of interest* and *potential conflict of commitment* in Section II.A of SPG 201.65-1 also apply to the procedures described below. Broadly defined, a potential conflict of interest encompasses external ties that may or may appear to improperly bias a staff member’s judgment in performing his or her University job responsibilities. A potential conflict of commitment, broadly defined, encompasses situations in which a staff member’s external relationships or activities may or may appear to interfere or compete with the University’s mission, or with the staff member’s ability or willingness to perform his or her job responsibilities.

B. Disclosing, Evaluating, and Managing Potential Conflicts of Interest and Conflicts of Commitment

1. Disclosing potential conflicts of interest and conflicts of commitment

Whenever a potential conflict of interest or conflict of commitment exists for a staff member, he or she must promptly disclose it, in writing, to ICLE’s Administrative Director . (SPG 201.65-1, Section III.A.3.)

Examples of potential conflicts include (but are not limited to):

- Performing work for other University departments or units for additional pay;
- Participating in decisions or deliberations where your own personal financial interests are or could be affected;
- Participating in decisions or deliberations where a family member is or could be affected, financially or otherwise (Note: As stated in SPG 201.65-1, family members include parents, siblings, a spouse or partner, children, and dependent relatives.);
- Performing activities for non-University entities for pay;
- Accepting gifts, entertainment, or other items of value from vendors or other third parties that do or have business with the University (also see below);
- Accepting an incentive or benefit to gain access to a staff member’s supervisor;
- Practicing law while employed full time for ICLE.
- Operating a free-lance business while employed full time at ICLE

Gifts

A potential conflict exists when a vendor, current or potential, gives a gift to a staff member. General University policy prohibits employees from accepting any gift of substantial value from vendors or from students (Regents’ Bylaw 2.16)

- Any gifts received that have a value over \$10.00 should be approved by ICLE's Administrative Director and should be given to the Institute, not taken personally by a staff member.
- General Counsel has advised that it is important to guard against the appearance of a conflict of interest. This might occur if a staff member goes out to lunch with a vendor, pays for it himself, but is seen by another vendor. Being viewed in this situation by a third party has the appearance of favoritism, even though the staff member did not accept the gift of payment for the lunch.
- Note SPG 507.1, IV .3 It is not permitted for University employees to accept either site visits or training from vendors. University employees may make vendor site visits but must not accept airfare, mileage reimbursement, hotel accommodations, paid meals, paid excursions, gifts or other benefits. Facility tours and, if necessary, sampling a facility's catered food is appropriate when on a site visit.

2. Evaluating disclosures of potential conflicts of interest or conflicts of commitment

The Administrative Director shall evaluate all disclosed potential conflicts of interest or conflicts of commitment. The Administrative Director may require the staff member to provide additional information or documentation that may be relevant to evaluating the potential conflict of interest or conflict of commitment.

As needed, the Administrative Director will consult with appropriate central administrative offices (e.g., Office of the Provost and Executive Vice President for Academic Affairs, Office of Human Resources and Affirmative Action, Office of the Vice President for Research, Office of the Vice President and General Counsel). (See also Section B.4, below.) As needed, he or she will also consult with the ICLE Director.

3. Developing plans to manage potential conflicts of interest and conflicts of commitment

When the Administrative Director has determined that a potential conflict of interest or conflict of commitment exists that must be managed or eliminated, he or she must develop, in consultation with the employee, a recommended plan for managing the potential conflict. The Administrative Director will then provide the plan to the employee's supervisor, who has authority for approving it. The supervisor will provide the employee with a copy of the approved conflict management plan and will discuss any related ambiguities or issues that arise.

4. Involving other University individuals or offices, as required

Purchasing

When a potential conflict involves a purchase of goods or services, the Administrative Director must also disclose the conflict to the appropriate staff person in the University's Office of Purchasing Services, and also to the unit staff member responsible for handling

unit purchases. If the Administrative Director determines that a conflict exists that must be managed or eliminated, he or she will consult with these individuals in developing a plan to manage the conflict.

Research

When a potential conflict involves work performed for a research project, the Administrative Director must inform the head of the research project. If the Administrative Director determines that a conflict exists that must be managed or eliminated, it is his or her responsibility to ensure, in consultation with the head of the research project, that the conflict management plan does not conflict with requirements related to the research or to research funding.

C. Administering the Policy

1. Record-Keeping and Issues of Confidentiality and Privacy

When personal financial or associational documents are provided to the Administrative Director, the documents shall be placed in a secure file accessible only to the Administrative Director and the unit supervisor. Where any other staff member has a legitimate business reason to access the documentation, then either the Administrative Director or the unit supervisor may authorize access to the file and provide either copies and/or information, as may be required for the stated business purpose. If the Administrative Director, the supervisor, or his or her designate provides copies of information in the files to a staff member, he or she must also ask that staff member to maintain the same level of confidentiality for the copied information as applies to the original information or documents.

Documentation of the staff member's disclosure and action taken shall be included within the secure file. The documentation may be as simple as identifying the disclosure and, when no further action was required, including a notation to that effect on the disclosure description.

In some circumstances, the University is required to disclose potential conflicts to people within or outside the University. For example, if a conflict exists within the context of a federally sponsored project, the University *is required* both to disclose the existence of that conflict (without providing identifying information) to the federal government and to indicate whether it has managed the conflict. Also, the University may be legally required to disclose information in response to requests made under the Michigan Freedom of Information Act (FOIA) <http://www.umich.edu/~urel/foia.html>. In addition to the people listed above, should any other individual have a legitimate educational or business reason to access the confidential records, whether in the context of a federally sponsored project, a FOIA request, or otherwise, the Administrative Director or the unit supervisor may authorize access to the file, provide copies, or provide oral or written summaries of the information in the file. Where possible, the individual to whom the

Administrative Director or unit supervisor authorizes disclosure shall be required to maintain at least the same level of confidentiality as applies to the original information.

Administrators of this policy will make every reasonable effort to preserve confidentiality and protect the privacy of all parties in the course of investigating a potential conflict of interest or commitment and, as applicable, in developing a plan to manage the conflict. (See Regents' Bylaw 14.07 *Privacy and Access to Information* and SPG 201.46 *Personnel Records – Collection, Retention and Release*.)

Any faculty or staff member who becomes aware of an Administrative Director or unit supervisor who has provided or may have provided unwarranted access to conflict documentation or information, as defined in this policy, should inform the Dean of the Law School. To follow up, the Dean will investigate the allegation and, where appropriate, take personnel action. **[May also refer here to SOX Hotline (from the Sarbanes-Oxley Act of 2002) when it becomes available]**

2. Resolving Disputes

When a staff member disputes any action or decision related to a potential conflict of interest or conflict of commitment, the staff member should first ask that the action or decision be reviewed by his or her supervisor.

If, following the above review, the staff member remains unsatisfied with the action or decision, the staff member may initiate existing University policies and procedures for handling disputes, when available.

3. Conducting Education and Training

Upon hiring into or transfer into the unit, every staff member shall be provided with the ICLE implementation policy. The policy, with their signature, will be kept in their ICLE personnel file. Designated ICLE staff will annually remind staff ICLE has computer, e-mail, and conflict of interest policies. The policies will also be posted on ICLE's Intranet.

In addition, every employee shall complete the on-line educational tutorial for overall University policy. A record of successful completion of the tutorial shall be provided to the ICLE Administrative Director. The tutorial can be found at http://www.provost.umich.edu/programs/COI_COC/tutoroverview.html. The certification form is available to download at the completion of the tutorial.

4. Violations

Any violation of SPG 201.65-1 or this implementing policy may be a cause for disciplinary action. In the first instance, the employee's supervisor shall evaluate the violation and take appropriate action, if needed, all in accordance with existing University policies and procedures. Consultation with the employee's Human Resources

representative may be appropriate. The outcome of the supervisor's review and any actions taken shall be documented and included within the secure file maintained by the Administrative Director. If appropriate, all relevant documentation may also be included within the employee's personnel file maintained as provided under SPG 201.46.

5. *Policy Review and Revision*

The Administrative Director shall regularly review all potential conflict disclosures and actions taken with the Director to ensure a consistent approach to potential conflicts within the unit. The Director shall similarly regularly consult and review potential conflict management issues with the applicable executive officer for the unit. If the Director determines that any of the changes he or she would like to adopt will materially change the policy, the Director will follow the procedures used to adopt the original policy <http://www.umich.edu/%7Ehraa/procedures/spg201-65-1.htm>. In particular, the Director will submit any materially revised policy to the Dean of the Law School for further review and approval and then to the President for formal adoption. A current version of ICLE's policy should be on file with the Dean of the Law School at all times.

D. Other Governing Policies

This policy implements SPG 201.65-1, *Conflicts of Interest and Conflicts of Commitment*, incorporates SPG 201.65-1 in its entirety, and includes all elements required under that SPG. Implementation of SPG 201.65-1 within ICLE requires compliance with other University policies and procedures, including all Regents' Bylaws and SPGs, as well as with any relevant external rules of professional conduct and applicable law. Relevant policies, procedures, rules, and law include (but are not limited to) the following:

- Regents' Bylaw 2.16, regarding gifts to University employees
<http://www.umich.edu/%7Eregents/bylaws/bylaws02.html#16>;
- Regents' Bylaw 5.13, regarding governmental elected or appointed service
<http://www.umich.edu/%7Eregents/bylaws/bylaws05b.html#4>;
- Regents' Bylaw 5.14, regarding leaves of absence
<http://www.umich.edu/%7Eregents/bylaws/bylaws05b.html#5>;
- SPG 201.12, regarding misconduct and discipline;
- SPG 201.23, regarding appointment of individuals with close personal or external business relationships;
- SPG 201.65, regarding employment outside the University;
- SPG 201.85, regarding special stipends for work performed for other University units, the payment of honoraria, and the payment of travel expenses;
- SPG 500.01, 601.03-2, and 601.11, in particular to the extent that they address appropriate use of University resources, such as the libraries, office space, computers, secretarial and administrative support staff, and supplies;

- Office of Vice President for Research (OVPR) Policy on Conflict of Interest in Sponsored Research and Technology Transfer Agreements
http://www.research.umich.edu/policies/um/conflict_ovpr_drda_tmo.html;
- and Michigan Compiled Laws § 15.321 et seq., regarding contracts of public employees with their employers.

I have received and reviewed this policy

Date _____