

Policy: Conflict of Interest and Financial Disclosure
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References:
Approved By: James E. Todd, Vice President for Administration and Finance

I. Policy

The University of Montana-Missoula actively encourages interactions with both the public and private sectors as an important component of its research, education, and public service activities. Research, educational, and public service activities supported by grants, contracts, or gifts from public and private entities and individuals provide a valuable source of funds, equipment, and topics for University of Montana-Missoula activities. Professional interactions, including consulting arrangements, between faculty and governmental entities and private businesses, advance The University of Montana-Missoula's ability to provide a high-quality research and educational experience for students, and thus enhance their employment opportunities. The University of Montana-Missoula's licensing of technology, assisting in new business start-ups, and other forms of technology transfer to both public and private entities, are critical to meeting society's needs.

The University of Montana-Missoula and its employees are committed to conducting themselves and their activities in accordance with the highest standards of integrity while remaining in compliance with state and federal ethics, and conflict of interest legal requirements applicable to the University. Interactions with the private sector carry an increased risk of conflict of interest. The University of Montana-Missoula's responsibilities in this area include the identification of the potential for conflicts of interest and the assurance that they do not improperly affect The University of Montana-Missoula in its relationship to sponsored projects involving research, education, and public service activities. It is the purpose of this policy to set forth the principles for identifying such potential conflicts and the procedures for reviewing and addressing potential conflicts that might occur. It seeks to protect the University faculty and staff so that public trust and confidence is ensured.

It is not the intent of this policy to regulate or eliminate all perceived conflicts of interest, but rather to enable University employees to recognize situations that may raise legal and ethical issues and ensure that such situations are properly reviewed and, if necessary, supervised or monitored in accordance with applicable state law and federal regulations. Thus, an integral part of this policy is a disclosure mechanism whereby faculty members regularly analyze their activities. This policy and accompanying procedures are intended to maintain the professional autonomy of faculty inherent in research, scholarship, and teaching. Additionally, this policy is intended to meet and conform to written federal conflict of interest regulations as required for institutions of higher education that receive grant and contract funds. Compliance with this policy is required by all University of Montana-Missoula employees.

II. Definitions

As used throughout this policy,

FACULTY MEMBER and/or **EMPLOYEE** (hereafter "a faculty member") means any person possessing either a full-time or part-time appointment at the University receiving wages and/or benefits from The University of Montana-Missoula who is responsible for designing, conducting, or reporting the results of actual or proposed research, educational, or public service activities. This includes any individual who has independent responsibility for the accomplishment of project objectives. The policy also includes those individuals, whether salaried or not salaried, who, on behalf of The University of Montana-Missoula, are responsible for writing, submitting, and managing externally sponsored activities awarded to the University by contract, purchase order, grant, cooperative agreement, or other such authorizing instrument. Additionally, this policy includes any student or other person responsible for designing, conducting, or reporting the actual or proposed research, educational, or public service activities. For purposes of this policy, the definition of "faculty member" also includes members of the individual's immediate family.

An **ASSOCIATED ENTITY** of a faculty member is any business, trust, organization, or enterprise over which the employee, alone or together with an immediate family member, has a significant financial interest.

BUSINESS means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other non-governmental legal entity organized for profit, not-for-profit, or charitable purposes.

EXECUTIVE POSITION refers to any position that includes responsibilities for a significant segment of the operation or management of a business.

A **SIGNIFICANT FINANCIAL INTEREST** in a business 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, or royalties from such rights).

For the purposes of this policy, disclosure of a significant financial interest is required when the interest in a single business by a faculty member or by an immediate family member exceeds \$10,000 in annual income of all types in the past twelve months, and equity or ownership interest from all sources in a single entity exceeds five (5) percent ownership. Disclosure is also required when an immediate family member holds an executive position in a business, or holds equity or ownership interest valued at five (5) percent or more in a business.

A significant financial interest does not include any interest arising solely by reason of investment in such business by a mutual, pension, or other institutional investment fund over which the faculty member does not exercise control. It also excludes:

- 1) Salary, royalties, or other remuneration from The University of Montana-Missoula;
- 2) Any ownership interests in The University of Montana-Missoula, if The University of Montana-Missoula is an applicant under the SBIR program;
- 3) Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;

- 4) Income from service on advisory committees or review panels for public or nonprofit entities;
- 5) An equity interest that, when aggregated for the faculty member and the faculty member's spouse and dependent children, 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,
- 6) Salary, royalties, or other payments that, when aggregated for the faculty member and the faculty member's spouse and dependent children over the next twelve months, are not expected to exceed \$10,000.

GIFT means an unrestricted donation of assets to The University of Montana-Missoula or any affiliate of The University of Montana-Missoula. The donor may specify the general purpose for which the gift may be used, but there may be no other terms and conditions specified concerning the use of such assets. Assets may be in the form of cash, securities, tangible personal property, partnership interests, or pledges for assets that are assigned to The University of Montana-Missoula. For the purposes of this policy, disclosure is required when (a) a gift is from a business in which a faculty member has a significant financial interest and (b) the value of the gift exceeds \$10,000 in a given year.

IMMEDIATE FAMILY or **FAMILY** includes the faculty member's spouse or domestic partner and dependent children as determined by the definitions of the Internal Revenue Service and State of Montana law.

PARTICIPATE means to be part of the described activity in any capacity including, but not limited to, serving as the principal investigator, co-investigator, research collaborator, or provider of direct services or patient care. The term is not intended to apply to individuals who provide primarily technical support or who are purely advisory with no direct access to the research (e.g., control over its data collection or analysis). Similarly, in the case of research with human subjects, the term does not cover study participants, unless they are in an independent position to influence the study's results or have privileged information as to the outcome.

SPONSORED RESEARCH, scholarship, or creative activities mean research, training, and instructional projects involving funds, materials, or other compensation from outside sources under agreements where any of the following apply:

- 1) The agreement binds The University of Montana-Missoula or an affiliated entity to a line of scholarly or scientific inquiry specified to a substantial level of detail;
- 2) A line-item budget is involved;
- 3) Financial reports are required;
- 4) The award is subject to external audit;
- 5) Unexpended funds must be returned to the sponsor at the conclusion of the project; or,
- 6) The agreement provides for the disposition of either tangible or intangible properties that may result from the activity.

For purposes of this policy, research also includes a systematic investigation designed to develop or contribute to general knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research, and product development.

A **CONFLICT OF INTEREST**, or potential conflict of interest, occurs when there is a divergence between the faculty member's private interests and professional obligations to the University, such that an independent observer might reasonably question whether the faculty member's professional actions or decisions are determined by considerations of personal gain, financial or otherwise. A potential conflict of interest exists when a faculty member has a significant financial interest in a business that has any dealings with the University. An actual conflict of interest occurs when a faculty member has a significant financial interest in a business that could directly and materially affect, or be directly and materially affected by, the design, conduct, or use of facilities in, or reporting of, research, educational, or public service activities performed as part of the faculty member's duties at The University of Montana-Missoula. Actual conflicts of interest are prohibited by state law and require careful management, plus full disclosure pursuant to federal law. [NSF Notice No. 117, Investigator Financial Disclosure Policy, as amended July 1995, FR 60(132):35820-35820; PHS Objectivity in Research; Final Rule FR 60(132):35810-35819, as amended FR 60(146):39076-39077, 45 CFR 50, 50.601-50.607 and 45 CFR 941-94.6; Montana Code Annotated, Title 2, Chapter 2, parts 1 and 2.]

The potential for conflicts arises because of the nature and scope of activities in which The University of Montana-Missoula and its faculty members and employees engage. The University of Montana-Missoula assumes that potential for conflicts of interests will occur regularly in the normal conduct of activities. However, it is essential that any significant potential for conflicts of interest be disclosed and reviewed by The University of Montana-Missoula prior to entering into the situation or relationship. After disclosure, The University of Montana-Missoula can then make an informed judgement about a particular case and require appropriate oversight, limitations, or prohibitions on the activity in accordance with federal and state law. Faculty members may not engage in activities in which a conflict of interest, as defined by this University policy, occurs.

III. Identification - Potential and Actual Conflicts of Interest

Significant Combinations of Activities and External Relationships

The potential for a conflict of interest arises when certain activities are proposed by the faculty member and are coupled to the existence of other external relationships. Some combinations (*Category I* below) are assumed not to represent a conflict of interest. Other combinations represent sufficient potential for conflict of interest (*Category II* below) to require review and prior University approval before the faculty member can engage in the activity. *Category III* below addresses a specific combination that is presumed to be a conflict of interest and is therefore not allowed.

The following is a representative, though not inclusive, list of activities and external relationships covered by this policy. The categories are general guidelines, and the application of appropriate review and oversight will always be in accordance with the goal of maintaining the full integrity and reputation of The University of Montana-Missoula and its employees.

Any combination of activity and external relationship not specifically represented in Categories I-III that a faculty member reasonably believes constitutes a potential conflict of interest must be reported in writing according to the procedures described within this policy before the faculty member proceeds with such activity.

Category I - Allowable combinations of activities and external relationships.

The following are not considered conflicts of interest and do not require disclosure. They are allowable if they are consistent with other applicable federal and state laws and policies of The University of Montana-Missoula and the Montana University System, including applicable System and University consulting and intellectual property ownership and disposition policies:

- 1) Salary, royalties, or other remuneration from The University of Montana-Missoula;
- 2) Any ownership interests in The University of Montana-Missoula, if The University of Montana-Missoula is an applicant under the SBIR program;
- 3) Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;
- 4) Income from service on advisory committees or review panels for public or nonprofit entities;
- 5) An equity interest that, when aggregated for the faculty member and the faculty member's spouse and dependent children, 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,
- 6) Salary, royalties, or other payments that, when aggregated for the faculty member and the faculty member's spouse and dependent children over the next twelve months, are not expected to exceed \$10,000.

Category II - Combinations of activities and external relationships for which there is a minimal to moderate potential for conflict of interest

The following combinations range from those that are considered to have minimal to moderate potential for conflict of interest (Section A) to those that have a moderate to high potential for conflict of interest (Section B). The activities in Section A are ordinarily allowable following disclosure and, where necessary, the implementation of oversight or other management procedures. The activities and external relationships listed in Section B require case-by-case review. Special oversight or management procedures are likely to be required (see Part V for disclosure and approval procedures).

Section A - Combinations of activities and external relationships for which there is a minimal to moderate potential for conflict of interest.

- 1) Research Activities
 - a) A faculty member participates in research on a technology, process, or product developed in whole or in part by that faculty member for which the faculty member, an immediate family member, or an associated entity is entitled to receive royalties not in excess of \$10,000 per year from an existing agreement with a business pursuant to the provisions applicable to intellectual property ownership and disposition of the Montana University System and The University of Montana-University Teachers' Union Collective Bargaining Agreement.

- b) A faculty member assigns students, postdoctoral fellows, or other trainees to research projects for which the faculty member, an immediate family member, or an associated entity is entitled to receive royalties not in excess of \$10,000 per year from an existing agreement with a business pursuant to provisions applicable to intellectual property ownership and disposition of the Montana University System and The University of Montana-University Teachers' Union Collective Bargaining Agreement.

Section B - Combinations of activities and external relationships for which there is a moderate to high potential for conflict of interest.

1) Research Activities

- a) A faculty member participates in clinical trials, evaluation, or development of a technology, process, or product owned or controlled by a business in which the faculty member, an immediate family member, or an associated entity has a significant financial interest, other than royalty income or the entitlement to future royalty income (where such actual and future royalty income does not exceed \$10,000 per year), pursuant to provisions applicable to intellectual property ownership and disposition of the Montana University System and The University of Montana-University Teachers' Union Collective Bargaining Agreement.
- b) A faculty member assigns students, postdoctoral fellows, or other trainees to projects supported by a business (through sponsored research or a gift) in which the faculty member, an immediate family member, or an associated entity has a significant financial interest, other than royalty income or the entitlement to future royalty income (where such actual and future royalty income does not exceed \$10,000 per year), pursuant to provisions applicable to intellectual property ownership and disposition of the Montana University System and The University of Montana-University Teachers' Union Collective Bargaining Agreement.
- c) A faculty member receives University of Montana-Missoula-supervised sponsored research support or gifts (whether in dollars or in kind) for research from a business in which the faculty member, an immediate family member, or an associated entity has a significant financial interest, other than royalty income or the entitlement to future royalty income (where such actual and future royalty income does not exceed \$10,000 per year), pursuant to provisions applicable to intellectual property ownership and disposition of the Montana University System and The University of Montana-University Teachers' Union Collective Bargaining Agreement.

2) Board Memberships

- a) A faculty member receives research support (sponsored research or a gift) from a business in which the faculty member or an immediate family member serves on the board of directors or advisory board, whether or not compensation is received for such services.

3) External Activities

- a) A faculty member holds an executive position in a business engaged in commercial or research activities directly related to the faculty member's University of Montana-Missoula responsibilities.

4) Administrative Responsibilities

- a) A faculty member has administrative responsibilities (e.g., dean, department chair, or director) on behalf of The University of Montana-Missoula with respect to the operation of The University of Montana-Missoula or any University of Montana-Missoula-affiliated organization that is beneficial to a business in which the faculty member, an immediate family member, or an associated entity has a significant financial interest.
- b) A faculty member has administrative responsibilities on behalf of The University of Montana-Missoula with respect to any supported research activity (sponsored research or a gift) in which the faculty member, an immediate family member, or an associated entity has a significant financial interest in the sponsor or donor.

5) Professional Referrals

- a) Except for consulting activities that conform to applicable University of Montana-Missoula and Montana University System consulting policies, a faculty member, while performing University duties, makes professional referrals to a business in which the faculty member, an immediate family member, or an associated entity, has a significant financial interest of which the faculty member is aware or reasonably should be aware.

Category III - A combination of an activity and an external relationship that is prohibited.

The following activity creates a conflict of interest and is not allowed:

- 1) Purchasing goods or services
 - a) A faculty member participates in decisions to purchase goods or services for the University in a manner which violates applicable federal or state purchasing laws, plus applicable University of Montana-Missoula or Montana University System purchasing policies.

IV. Implementation - Assurance of Compliance and Financial Disclosure

Successful implementation of this policy assumes a shared responsibility by all faculty members and the administration of The University of Montana-Missoula. Faculty members are expected to comply with all disclosure requirements described below, but may initiate review at any time through written disclosure to the Vice President for Research. Once a faculty member's proposed research, educational, or public service activities have been administratively reviewed, The University of Montana-Missoula administration has the responsibility to support the activity so long as the faculty member complies with the disclosure requirements, other University of Montana-Missoula policies, and state and federal law.

A. Disclosure Requirements

Requirements for disclosure of significant financial interests:

Any time a faculty member plans to initiate an activity that may be classified under *Category II* of this policy, the faculty member must disclose it and obtain prior approval from the Vice President for Research. For the purpose of this policy, disclosure is required when the faculty member, an immediate family member, or an associated entity has a significant financial interest which could directly and materially affect, or be directly or materially affected by, the faculty member's actual or proposed University of Montana activity (including any actual or proposed federally funded research) before such activity is proposed or begun.

Additionally, disclosure and prior approval are required when the interest in a business by a faculty member, an immediate family member, or associated entity exceeds \$10,000 in the past twelve months or represents more than a five (5) percent ownership interest for any one enterprise or entity when aggregated, or when salaries, royalties, or other payments, when aggregated for the past twelve months, exceed \$10,000.

- 1) Disclosure when submitting a proposal for sponsored activities with an external agency:

All faculty members making an application to any external agencies must complete the *Checklist for Proposal Approval*. The initials of the faculty member on the *Checklist for Proposal Approval* form certify that the faculty member has read and understood this policy and that 1) the faculty member does not have a conflict of interest and is in compliance, or 2) that the faculty member has appropriately disclosed, in writing to the Vice President for Research, any significant financial interest which could create a conflict of interest, or a potential conflict of interest, and has been found to be in compliance. The Vice President

for Research, from the written disclosure, will determine a strategy to manage, reduce, or eliminate the potential conflict.

2) Update of disclosure:

If a faculty member obtains new reportable significant financial interests during the period of an award, the faculty member must disclose in writing such changes to the Vice President for Research. The Vice President, from the written disclosure, will determine a strategy to manage, reduce, or eliminate the potential conflict.

3) Disclosure when involved with review or advisory activities:

All faculty members must temporarily disqualify themselves from any University of Montana-Missoula committee or review process that is considering an activity in which they have a significant financial interest.

In addition, faculty members must also disclose to committee chairs and the appropriate administrator or executive officer any interest (business, financial, or family) that might cause the faculty member to compromise judgement while serving as a committee member or making advisory decisions. An example is serving in an executive position for any organization that does business with The University of Montana-Missoula or sets policies or rules that affect activities of The University of Montana-Missoula.

B. Review of Disclosures

1) Purpose of review:

The general purpose of review is to assist employees and The University of Montana-Missoula in avoiding or controlling risks to integrity and reputation engendered by such relationships, while at the same time protecting and furthering the interests of faculty members, The University of Montana-Missoula, and society in the activities supported by sponsored research and gifts.

Examples of conditions or restrictions that might be imposed to manage, reduce or eliminate actual or potential conflicts of interest include but are not limited to:

- public disclosure of significant financial interests;
- monitoring of research by independent reviewers;
- modification of the research, educational, or public service activities plan;
- disqualification from participation in all or a portion of the research;
- divestiture of significant financial interests; or,
- severance of relationships that create potential conflicts of interest.

If the Vice President for Research determines that imposing conditions or restrictions would be either ineffective or inequitable, and that the potential negative impacts likely to arise from a significant financial interest are outweighed by interests of scientific or educational progress, technology transfer, or the public health and welfare, then the Vice President for Research may allow the activities to go forward without imposing any conditions or restrictions as long as the activity does not violate state or federal law.

2) Appeal/reconsideration process:

If a faculty member believes the conditions or restrictions are inappropriate, the faculty member may appeal or ask for the decision to be reconsidered. The Vice President for Research will then refer the appeal to a Conflicts of Interest Review Committee (CIRC) (see Part VII for membership and guidelines) to have the activity reconsidered. Upon completion of the review, the Vice President for Research will consider the CIRC recommendation(s), if any. If a faculty member believes that there exists cause for further review, the faculty member may appeal to the President of The University of Montana who shall make a final determination of the appeal. A faculty member who disagrees with the President's decision may appeal to the Montana Commissioner of Higher Education and exercise any applicable rights permitted by Article 19 of The University of Montana-University Teachers' Union Collective Bargaining Agreement. No award will be accepted by the University while any appeal is pending.

C. Reporting and Record Retention

The Vice President for Research will report to external sponsoring agencies as required by the agencies 1) the existence of any conflict of interest found by The University of Montana-Missoula, and 2) actions taken to manage, reduce, or eliminate the conflict. The Vice President for Research will maintain records of all *Checklist for Proposal Approval* forms, written disclosures, and all actions taken by The University of Montana-Missoula, on an award-by-award basis, for at least three (3) years beyond the termination of the award or until resolution of any action by The University of Montana-Missoula or governmental agencies involving the records. All records will be maintained in a manner to protect sensitive and confidential information consistent with state and federal law. To the extent required by law or requested by the sponsor, the Vice President for Research will also inform the office of general counsel of any external sponsor of University research activity whenever the University finds itself unable to manage and satisfactorily resolve any conflict of interest related to the sponsor's University activities.

D. Applicability of the Policy

To the extent required by law, The University of Montana-Missoula will subject all sub-grantees, contractors, and collaborators on externally-funded University projects to all aspects of the policy, including, but not limited to, all reports, plus compliance and disclosure certifications required in the policy.

V. Compliance

The University of Montana expects faculty members to comply fully and promptly with all requirements of this policy as applicable to federal and state regulations. Breaches of this policy include, but are not limited to, intentionally filing an incomplete, erroneous, or misleading *Checklist for Proposal Approval* form, failing to provide additional information as required, or failure to provide a written disclosure to the Vice President for Research as required. A violation of this policy may be the basis for discipline of a faculty member. If sanctions are necessary, they will be imposed in accordance with applicable Montana University System policies and The University of Montana-University Teachers' Union Collective Bargaining provisions. The potential sanctions may include, but are not limited to, the following:

- Letter of admonition;
- Ineligibility of the faculty member to submit grant applications;

- Withholding Institutional Review Board (IRB) or Institutional Animal Care and Use Committee (IACUC) approval, or supervision of graduate students;
- Suspension;
- Non-renewal of probationary appointment;
- Termination

VI. Conflict of Interest Review Committees (CIRCs)

A. Formation and Membership

The Vice President for Research will determine whether Conflict of Interest Review Committees should be organized to assist in review, or upon appeal by a faculty member, the potential for conflicts of interest regarding sponsored research and gifts. In consultation with Faculty Senate and appropriate deans, the Vice President for Research will be responsible for appointing committee members to one or more CIRCs. A CIRC may be organized by school (multiple departments) or for a particular department if the number of such cases or their nature justifies a separate committee. Three-quarters of the voting membership of each CIRC will be faculty members from the area or department(s) to be served. The remaining one-quarter of the voting members will include faculty from outside the department(s). Some of the members should be individuals who have participated in approved external relationships. Each CIRC will also include nonvoting representation by the Director of the Office of Technology Transfer. Faculty members whose activities are under review will have the opportunity to meet with the CIRC to discuss their situation and possible solutions.

B. Guidelines

The principal objective for the CIRC is to help guard faculty members and The University of Montana-Missoula from engaging in activities where the risk to integrity and reputation as a result of an external relationship outweighs the value of the activity to academic and societal goals. Relevant factors to consider are the nature of the financial interest, when and where the relationship commenced, whether the conditions of the relationship have changed during the past year, the likelihood of a conflict of interest (will the results of the activity likely affect or be affected by the significant financial interests), mechanisms to ensure integrity (peer review, other independent research sites, and independent monitors or controls), the importance of the proposed activity, and the availability of alternatives to avoid the conflict of interest.