Re-emerging Concern for Conflicts of Interest and Commitments: Practical Considerations for Policy Development

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I. The cicada-like re-emergence of concern for conflict of interest can be traced, in part, to the recent corporate scandals. Enron, Tyco, WorldCom, Adelphia and their ilk have prompted a resurgence of interest in corporate governance that includes examination of the adequacy of policies addressing conflict of interest and commitment.

The nonprofit sector has not been immune from conflict of interest issues. Several years ago, the national head of the United Way William Aramony’s scandalous behavior brought disrepute to that organization, as well as a criminal conviction for him. A recent New York Times article, *Battle in an Omaha Charitable Group Reflects Issues Raised in Corporate Scandals* (NY Times National ed., 1/9/2004, pg. A11) focused attention on an intra-family dispute in which the Omaha foundation’s patriarch alleged that some grants made by the foundation constituted conflicts of interest and self-dealing by his nephew, a trustee and a foundation manager. Other recent conflict of interest situations in the nonprofit world cited by the Times included the University of Georgia Foundation’s spending more than $30 million in dealings with companies linked to 27 of its 55 trustees; a Minnesota court ordering changes in the board overseeing the distribution of Minnesota’s tobacco settlement funds because many board members were representatives of organizations that were very likely to seek the funds; foundations linked to the New York Stock Exchange and Nasdaq have been criticized for making donations to organizations with ties to their board members; and the Senate Finance Committee is investigating the Nature Conservancy, in part for its purchases of land from board members’ companies and for below market sales of real estate to trustees. The Times observes “In the charitable world, the exploitation of personal connections has
long been seen as more virtue than vice. But in the new climate, lawyers for charities say they have been flooded with requests for counsel on potential conflicts: Should a lawyer or an accountant whose firm is paid to work for a charity or foundation sit on the organization’s board? Given the news media’s increasing role in questioning nonprofit activity, should a newspaper publisher be on the board of any charity?”

Conflict of interest claims against university presidents and boards have arisen in recent years. In *Oliver v. Boston University*, 27 Del. J. Corp. L. 391 (Del. Ct. of Chancery 2000), a suit alleging conflict of interest, self dealing and breach of the duty of loyalty was brought against former Boston University President John Silber (and others) for their alleged corporate malfeasance. A proceeding to remove the trustees of Adelphi College for providing lavish compensation and benefits to Adelphi’s president, engaging in conflict of interest transactions and failing to properly oversee the university continued, despite the university’s attempts to dismiss it. *Adelphi Univ. v. Bd. of Regents*, 647 N.Y.S. 2d 678 (Sup. Ct. 1996). Later, the former board was ousted and replaced.

This is an age of accountability, with heightened concern for ethical behavior by board members, university administrators, faculty and others with decision-making authority. This paper will examine the process for developing policies of conflict of interest and commitment, and the component’s of those policies.

II. Why Worry About Conflict of Interest?

We are well beyond the Alfred E. Newman of *Mad* magazine’s “what, me worry” attitude when it comes to conflict of interest. An extensive delineation of all state and federal laws prohibiting conflict of interest is beyond the scope of this paper. Preventing conflicts and insuring that decisions are made on the basis of merit, not influence, by public officials underlie legislation in many states.

Perhaps inspired by numerous federal indictments of former employees of the Illinois Secretary of State’s Office, including former Secretary of State (and former Governor) George Ryan, Illinois passed a major enhancement of its ethics legislation, Public Act 93-0617. Applicable to state universities as well as other state government employees, it mandates annual ethics training for all employees of state higher education institutions, including their boards. It limits eligibility for appointment to state boards by
excluding, among other persons, lobbyists or their spouses. Limitations on employment of former state employees by businesses they contracted with are imposed, as are restrictions on gifts to state employees by those doing business, or seeking business, from state entities, including universities. Public Act 093-0617 (Ill. 2003)

Illinois statutes also contain the “University Faculty Research and Consulting Act” (110 ILCS 100) which seeks to address conflict of interest and conflict of commitment by requiring full-time faculty at any state higher education institution to obtain approval from the institution’s chief executive (or designee) before undertaking any consulting services. In addition, the faculty member must submit an annual statement of “actual time” spent on outside research or consulting services.

Avoiding private inurement should be a concern for private colleges and universities. Should a conflict of interest constitute private inurement, income tax exempt status under section 501(c)(3) of the Internal Revenue Code could be jeopardized. Impermissible private inurement involves two elements: (1) the individual (insider) who receives the benefit has the ability to control or otherwise influence the actions of the tax-exempt organization so as to cause the benefit, and (2) the benefit conferred be intentionally conferred by the tax-exempt organization. An example of how a conflict of interest could constitute private inurement would be a situation where a director or officer of a non-profit caused a financial benefit to be conferred that was not in the organization’s best interest. For more on private inurement, see Bruce R. Hopkins, The Law of Tax-Exempt Organizations, (6th ed. 1992).

Recipients of research grants from the National Institute of Health and the National Science Foundation have long been subject to conflict of interest policies. Other federal agencies, however, do not have financial conflict of interest standards for university research grants, according to a recent GAO study, University Research: Most Federal Agencies Need to Better Protect Against Financial Conflicts of Interest (GAO-04-31, 2003). The GAO report urges the development of conflicts policies by the other funding agencies. Thus, one can anticipate an ongoing necessity to develop and revise conflict of interest policies.

Conflicts of interest in clinical research have been a significant issue for some time for health science centers with research supported by federal funds. A valid concern
exists that financial relationships could cause a faculty member to prefer an outcome congruent with his or her financial interest, with a concurrent maximization of risk to a patient, and exaggeration of benefit. Concern exists that a significant financial interest could influence the design, conduct or reporting of PHS-funded research and that equity interests held by institutions could affect the outcome of research, all to the detriment of the patients involved in the study.

Federal guidelines mandate a process of disclosure and review by institutional review bodies with participation denied for researchers with a significant financial interest in the outcome of the research. The consensus of observers of the process of conflict of interest resolution is that more rigorous guidelines will issue from governmental funding entities and that there will be increased scrutiny of situations that involve conflicts of interest, or the appearance thereof. The inescapable conclusion is that if we don’t police ourselves, the government will.

III. Conflict of Interest and Commitment Policy Development

A. When Does It Occur?

Policy review, revision and development is typically initiated in higher education for one or more of the following reasons:

1. A change in relevant statutes or regulations;
2. A judicial decision;
3. The appointment of an administrator;
4. An unfortunate incident;
5. Direction from above;
6. Comparison with policies at other institutions;
7. Passage of time;
8. “Best practice” implementation;
9. Faculty initiative;
10. Government review or complaint resolution;

B. Who Does It?

“Does” has two components, the drafting, and review or consultation. The administrator of the institution’s office dealing with grants, contracts, technology transfer and human subjects should be a key figure in the drafting process.
Probably several people from that office, along with legal counsel, will produce the initial draft. Other administrators or a few faculty may be involved. But the drafting group should always be small in number, in order for the project to proceed at a reasonable pace.

At institutions with faculty unions, one will have to consider whether the policy must be bargained. Hopefully, this will normally not occur. Institutions with unions should exclude issues of legal compliance from the scope of bargaining. Legal compliance is an institutional responsibility. The impact of non-compliance will normally have a more significant effect on the institution, such as loss of funding, than the individual faculty member or union.

Obviously, consultation with university constituencies affected by the policy needs to occur to assure voluntary participation and compliance. But extensive redrafting should be discouraged. At this stage, the role of the key administrators involved in the drafting shifts from drafting to advocacy and explanation.

C. Who Is Covered?

Those encompassed by the policy, at the very least, should be the faculty and staff within the scope of federal or state regulation. It would be desirable to construct a policy that goes beyond the current state of regulation. Faculty and professional staff are the groups most commonly covered by a policy. Groups within the university, like purchasing officers or university counsel, may create additional policies, such as prohibiting acceptance of gifts from vendors or limiting outside legal practice.

Trustees of private universities often have separate policies. Often statutory prohibitions constitute the policy for trustees of public institutions.

D. What Is Covered?

Regulation or prohibition of activities or relationships that create conflicts of interest or conflicts of commitment are the objectives of the policies. A clear definition of the conflicts, and a general understanding of what may constitute a conflict by those governed by the policy, are essential initial conditions for an effective policy.
Definitions vary: See the SIUC policy following for examples. Another example: “A conflict of interest exists when an individual has an external economic interest that affects or provides an incentive to affect the individual’s conduct of his or her university activities. Conflicts of interest can arise naturally from an individual’s engagement with the world outside the university. The mere existence of a conflict of interest does not necessarily imply wrongdoing on anyone’s part. When conflicts of interest do arise, however, they must be disclosed and either eliminated or managed.” Excerpt from SIU School of Medicine Policy.

A conflict of commitment definition proposed by the Association of American Medical Colleges follows: “The term conflict of commitment relates to an individual faculty member’s distribution of effort between obligations to one’s academic appointment…and one’s commitment to “outside” activities…. A conflict of commitment arises when these [outside] or professionally removed activities (e.g., outside teaching or business) come to interfere with the paramount obligations to students, colleagues, and the primary missions of the academic institution by which one is appointed and salaried....”

Guidelines for Dealing with Faculty Conflicts of Commitment and Conflicts of Interest in Research, 65 ACAD. MED. 487, 490-91 (1990)

Some policies include examples of conduct that would be regulated or prohibited. So long as they are understood to be examples only, and not limitations on the institution in similar cases, they probably are useful. Because conflict of interest usually has a financial component, a definition of what constitutes a significant or substantial financial interest is essential.

E. The Necessity of Disclosure

Disclosure of a conflict of interest before the transaction, whatever it might be, is completed, or approved, is essential. Many institutions require annual reporting. However, “after the fact” reporting, in addition to not heading off conflicts, creates a more difficult situation for administrators to resolve. If a conflict of interest already exists, potential liability may exist for the individual and the institution. The administrator discovering the conflict will undoubtedly
incur the enmity of the person with the conflict because the conflict situation will probably be terminated. Annual reporting may be somewhat useful in detecting and managing conflicts of commitment. Inquiry can be made to determine whether the faculty or staff member will be able to meet his or her institutional responsibilities and a monitoring plan can be developed. Many outside activities can be beneficial to the institution, such as participation in professional organizations, but clearance for extensive involvement should occur in advance.

Prior disclosure of potential conflicts of interest is critical. A comprehensive requirement for disclosure and approval of any outside activity, including contracts for research, for which the faculty or staff member receives compensation, or has a significant financial interest, will serve the institution well.

F. Review of Disclosures

Most institutions already have procedures in place to review disclosures and assess conflicts. A number of institutions have appointed ethics officers, often an additional responsibility for the institution’s general counsel. The ethics officer’s duties can include reviewing disclosures and addressing individual conflict of interest questions. In addition, that person should keep the campus community informed of statutory and regulatory developments.

Because of the emphasis by government and the media on conflict of interest issues in clinical research, many institutional review boards have resolved conflict issues involving researchers with ties to drug or device companies. Some institutions have created bodies to address conflict of interest issues. Another approach is to have the issue brought to the immediate superior (e.g., Dean) or some other administrator.

Conflict of commitment issues can best be resolved between the faculty or staff member and his or her supervisor, in consultation with the next level of review (e.g., Department Chair and Dean). The Department Chair will (or should) be aware of the time demands and university responsibilities relevant to an assessment of a potential (or actual) conflict of commitment. Involving the next level of supervision should assure uniformity of approach.
Whatever process is chosen for examining and resolving conflicts of interest, care must be taken to assure consistency. Probably the only way to assure this is to have, within the university, a person who will be aware of the resolutions and will be a resource for those making them, if decision-making occurs by others. Faculty and staff will normally be reluctant to disclose potential conflicts so the process needs to reassure them that they are not being penalized for seeking guidance or making a disclosure.

IV. Sample Policies: The Missouri Bar Conflicts of Interest Policy and the proposed Southern Illinois University-Carbondale Policy on Conflicts of Interest and Commitment follow:

Missouri Bar Conflict of Interest Policy

“It is the obligation of members of The Missouri Bar, its Board of Governors, Committees and Staff to fully disclose any conflicts of interest that they may have while acting on behalf of, or participating in, the decision-making process of The Missouri Bar.”
Purpose and Principles

All full-time faculty and A/P staff of Southern Illinois University Carbondale ("SIUC," "University") are required to give the University their primary professional loyalty, and to arrange their financial interests, consulting, and other non-University activities and relationships so as not to conflict or interfere with their commitment to SIUC. At the same time, it is recognized that the University has a broad mission encompassing education, research (construed to include a wide range of scholarly and creative activities), and service, and aspects of this mission can be enhanced when employees engage in professional activities outside the institution. In the same vein, a broad range of non-University professional activities can complement and enhance the development and professional job-related skills of employees. Such activities and relationships are mutually beneficial to the employee, the University, and the region and state, and are encouraged.

There is, however, an inescapable tension between these philosophical positions, as well as the potential for abuse. The opportunity for employees to receive financial rewards from external endeavors is not intrinsically unacceptable, as long as these activities do not conflict with the primary commitment to the University and its mission. Thus, all employees must be alert to the possible effects of their non-University income-generating activities and relationships on the objectivity of their decisions about the design, conduct, or reporting of research, on the fulfillment of their educational obligations to the institution and its students, and on the discharge of the University's responsibilities to the general public, including the prudent stewardship of public funds.

The purpose of the SIUC Policy on Conflicts of Interest and Commitment, and the annual disclosures that are required therein, is neither to discourage nor prohibit these non-University consulting or other financial activities and relationships. Rather, the purposes are to balance University interests with those of individual employees, and to promote integrity, objectivity, and accountability in research and other endeavors. This Policy establishes a procedural framework for obtaining advice about potential conflicts of interest and commitment, and guidance for resolving and managing or monitoring such conflicts, in order for the University to manage, reduce, or eliminate those situations. In brief, this Policy has five procedural components — disclosure, approval, management, sanctions, appeal — each of which may consist of several steps.

This Policy implements an Illinois law requiring University faculty members (employees) to obtain prior written approval before engaging in remunerated activities for external persons or organizations. It also implements the Public Health Service and National Science Foundation Regulation promulgated in 1995 concerning Financial Conflict of Interest and Objectivity in Research. The policy is revised and updated in accordance with applicable federal regulations, other state of Illinois laws, and SIUE and SIU Board of Trustees policies promoting objectivity in research and consulting through disclosure of conflicting financial (and other) interests and commitments of investigators. Although this policy applies to only full-time faculty and A/P staff, the stated principles are also applicable to employees working less than full-time.
Definitions: Conflict of Interest and Conflict of Commitment

Persons Covered: This policy covers full-time faculty and A/P staff ("covered employees") at Southern Illinois University Carbondale.

Conflict of interest refers to a situation in which an employee can directly or indirectly influence University business, research, teaching, or other decisions in ways that lead, could lead, or could appear to lead to some form of personal gain, financial or otherwise, for the individual or his/her family, or that give or appear to give improper advantage to others to the detriment of the University. For this policy, family refers to spouse and dependent children.

Conflicts of interest are of particular concern in the area of research, and especially in the area of human subjects research. It is important to avoid situations in which financial gain and related considerations might compromise, or have the appearance of compromising, an employee's professional judgment in the design, conduct, and reporting of research endeavors.

Significant Financial Interests (SFI): The financial interests of the employee and family from non-University (i.e., non-University salary) sources, including but not limited to:

- 5% or more ownership interest in a business, including any stock or stock option, but excluding any interest arising by reason of investment by a mutual fund, pension, or other institutional investment fund over which the employee does not exercise control;
- Receipt of or the right to receive income from a business, whether in the form of a fee, salary, allowance, forbearance, interest in real or personal property, dividend, royalty from licensing, rent, or other form of compensation, or any combination thereof, that exceeds $10,000 in gross billings.

Significant University Support includes, but is not limited to: University funding (non-salary); University-paid time; University staff assistance; substantial use of specialized or unique University facilities and equipment, including telecommunication services, central computing resources, instructional design/media production services and facilities, and research facilities/equipment; and support provided by other public or private organizations when arranged, administered, or controlled by the University. It also includes use of students receiving financial support from the University or employees as support staff to develop the work, and other special subventions provided by the University unless approved, upon written request to the Provost, as an exception.

Conflict of commitment refers to a situation in which an employee's non-University activities are sufficiently demanding of time and attention that they interfere, or appear to interfere, with his/her assigned duties and responsibilities to SIUC students or the University in general. While conflicts of commitment generally refer to the employee's time, there may also be conflicts resulting from commitment of University resources, commitment of graduate and undergraduate students' time and labor, and commitment of intellectual property:

- Resources: Employees may not use University resources (research labs or instrumentation, computer facilities, classrooms, etc.) for non-University activities without prior approval of the University. Such facilities and resources may be used with permission if suitable compensation is provided to the University by the external or private entity. (See definition of "significant university resources.")
Students: Employees may not involve graduate or undergraduate students in outside activities unless it can be demonstrated that such participation affords a substantial educational benefit for the student. Students and trainees should not be permitted to participate in research if the terms and conditions of participation would prevent them from meeting applicable degree requirements. No employee shall hire or directly supervise a student in non-University activities while simultaneously serving as the student's advisor, supervisor, or as a member of that student's thesis or dissertation committee without the prior written approval of the Chair of the student's academic unit. Cases involving use of students must be closely monitored by the academic unit, not by the individual employee.

Intellectual Property: No employee may cede or transfer rights to patents, licenses, copyrights, or other proprietary rights to research results to any external agency except through the sharing provisions set forth in the research or consulting contract and pursuant to the University Policy on Intellectual Property.

The fundamental issue in these conflicts concerns the relationship between an employee's University duties (teaching, research, service) versus his/her outside and remunerated professional interests, activities, or relationships (such as consulting, business ownership, other employment, etc.), which are often closely related to those University duties. Could an independent observer reasonably question whether, or perceive that, such outside activities — particularly the time devoted and the financial gains that result — might negatively influence the employee's responsible performance of his/her University duties? If so, there is a potential for conflict of interest and/or conflict of commitment. Conflicts of interest and commitment are not unusual in universities and are not necessarily inherently bad. The point is that federal regulations and state laws require that such conflicts or potential conflicts must be clearly identified and managed or monitored by the University. In some cases the conflict or potential conflict will require the employee to cease or curtail the activity.

See APPENDIX I for examples of allowable income-generating activities. See APPENDIX II for examples of income generating activities requiring prior approval and management or those activities that are non-allowable through the provisions of this policy.

Institutional Procedures and Responsibilities

1. Disclosure

University identification and management of conflicts of interest and commitment begin with disclosure: the release of relevant information about significant financial interests (SFI) and time and other commitments to non-University interests and activities. This is accomplished when the employee completes the Annual Disclosure Form (ADF) on Conflicts of Interest and Commitment. Each employee must obtain prior written approval to engage in non-University income-generating activities.

At the beginning of each Fall semester, employees are required to complete the University's Annual Disclosure Form, which cover activities during the calendar year from September 1 through August 31 of the following year. The ADF materials must be submitted to Department Chairs or unit officers (Directors, etc.) by August 31 of each year. Department Chairs or unit officers will then initiate the administrative review and approval process using the ADF Administrative Review of Conflicts of Interest and Commitment.
If warranted, they will develop a Management/Monitoring Plan (MMP) to address the conflict. MMPs for Conflicts of Interest and Commitment might include one or more of the following (this list is not exhaustive):

- Requirement for public disclosure of significant interests
- Monitoring of the activity by an independent oversight committee of reviewers (SIUC employees)
- Modification of a research or business plan
- Disqualification from participation in all or part of a federally funded research activity
- Divestiture of significant financial interest
- Severance of relationships that create actual or potential conflicts

All employees submitting a grant proposal or contract must complete the Potential Conflict of Interest section in the Proposal Checklist. If employees on the project do have a potential conflict of interest, they must submit to ORDA a copy of their ADF materials, including the Management/Monitoring Plan, along with the Proposal Checklist. ORDA will not accept awards or contracts if any conflicts of interest identified on these disclosure forms have not been resolved satisfactorily.

Researchers who have a significant financial interest in a sponsor or a business involving human subjects must disclose the existence of this interest to the Human Subjects Committee in addition to submitting the ADF materials through their departments. The Human Subjects Committee will work with the Provost regarding any special subject protection issues.

2. Review Process

Chairs/officers will review the ADF materials for possible conflicts of interest and commitment, and report their findings on the Administrative Review of Conflicts of Interest and Commitment Form.

- If no conflict or potential conflict can be found to exist, the forms will be signed and retained in the Chair's/officer's office, with a copy given to the employee.
- If a conflict or potential conflict appears to exist, the Department will develop a plan to manage and/or monitor that activity. The ADF paperwork, including this MMP, will be forwarded to the Dean's office for review. If the Dean approves the activity and the plan, s/he will sign the ADF materials, retain the original forms and explanations in Dean's Office files, and return a copy of the signed Administrative Review Form to the Department/unit.
- If the Dean believes there is a conflict or potential conflict, and does not approve the activity and/or the management/monitoring plan, s/he will sign the ADF form to that effect and forward all original materials to the Provost for review by the SIUC Committee on COI/C. The Department/unit shall be notified.
- The COI/C Committee will review the activities and plans and either approve them with a revised and dated management/monitoring plan, or disapprove the activity. The Administrative Review Form will then be signed by the Chair of the COI/C Committee and the Provost.
- Employees may appeal the decision of the Provost through existing grievance policies.
3. SIUC Committee on Conflicts of Interest and Commitment

The SIUC Committee on Conflicts of interest and Commitment (COI/C) ("Committee") shall be constituted of one or more full-time tenured faculty appointed by the Provost and one or more faculty and staff drawn from names submitted to the Provost by the Faculty Association, Faculty Senate, Graduate Council, and A/P Council. One representative from the Office of General Counsel and one from ORDA shall serve on the committee in ex-officio capacity. The Committee is advisory to the Provost, who shall appoint the Chair and make final decisions.

Except for the initial appointments, all members of the Committee on COI/C shall serve staggered terms of three years. All colleges shall have the opportunity to be represented on the Committee over a period of years, but not all at one time; at no time shall there be more than one representative of any college.

It is the responsibility of the SIUC Committee on COI/C to review the documents concerning an employee's conflicts of interest and commitment and the associated Management/Monitoring Plan, in order to determine if the activity and plan should be approved, if the plan should be revised, or if the activity should be disapproved. The Committee may discuss the matter with the individual involved, and invite technical representatives from the faculty or administration to address the committee and provide advice on technical matters beyond the experience of members, particularly in the case of research involving human subjects, in order to help identify whether conflicts exist and how they might be managed or monitored.

4. Reporting and Records Management

Each full-time covered employee of the University must complete and submit an Annual Disclosure Form on Conflict of Interest/Commitment to the Chair or Director of his/her unit by August 31 each year.

All activities of the SIUC Committee on COI/C activities shall report through the Provost and Vice Chancellor. Records of all financial disclosures and all actions taken will be maintained for at least three years from the date of submission of the final expenditures report.

If the activity involves federal funding, the university must notify the relevant granting agencies if it is unable to satisfactorily manage actual or potential conflicts of interests. The Director of ORDA will act as the University's certifying official for reporting management plans for conflicts of interests to federal funding agencies when the employee has submitted a proposal.

In the case of research and scholarly and creative activities, each investigator is accountable for the integrity of any publication bearing his/her name. Any financial interests related to the research should be disclosed in manuscripts submitted for publication as well as in oral presentations.

5. Non-Compliance and Sanctions

For all conflicts of interest or commitment that are not related to sponsored projects, the responsibility for enforcement and sanctions lies in the hands of the Department Chair or unit officer (e.g., Director) and the Dean of the College.
In the case of conflicts of interest and commitment related to sponsored projects, the approved Management Plan will be incorporated into a Memorandum of Understanding between the Director of ORDA and the Principal Investigator/Project Director (PI/PD). Enforcement will be a joint effort between the PI/PD, the Director of ORDA, and the Department Chair or unit officer.

Also in the case of sponsored projects, prior to expending any funds under an award, SIUC will report to the federal funding agency the existence of a conflicting interest with information as to how it is being managed, reduced, or eliminated. For any interest identified as conflicting subsequent to this initial report, a second report will be made with the information on how that interest is being managed, reduced, or eliminated, at least on an interim basis, within sixty (60) days. If the PI/PD has biased the research, SIUC will promptly notify the awarding component of corrective action taken or to be taken. Federal sponsors may terminate the award and/or disbar the PI/PD from receiving future awards.

Failure of University covered employees to comply with this Policy, including the conditions imposed on sponsored projects, will be grounds for discipline and sanctions under the appropriate University policy, either the University Policy on "Disciplinary Action and Termination for Cause" (approved by the President of SIU, May 26, 1993), or provisions of the Collective Bargaining Agreement.

Sanctions are warranted for failure to report potential conflicts or to abide by a remedy. Severity of sanctions depends on the extent of the violations of this Policy. Inadvertent, unintentional, and minor breaches require lesser sanctions, whereas knowing, deliberate, and major violations demand the severest sanctions. Any sanctions for violations of this Policy shall be carefully examined with due regard for the academic freedom and rights of the academic staff member and the interests of SIUC. While gross non-compliance with this Policy could constitute due cause for dismissal, this Policy does not abrogate any of the procedural protection afforded by tenure. Sanctions shall be reduced to writing and any associated documents routed through regular reporting channels. The employee will be afforded an opportunity to respond before the proposed sanction is forwarded to the next administrative level.

NOTE: For PI/PDs participating in the federally funded Phase I SBIR (Small Business Innovation Research) and STTR (Small Business Technology Transfer) programs, there are certain exclusions pertaining to reporting of financial conflicts of interest.

Relevant Laws and Regulations

University: "Use of University Property" http://www.siu.edu/bot/
University: "Regulations Governing the Use of University Personal Property." http://intranet.siu.edu/~docedit/policies/useprop.html
University: "Disciplinary Action and Termination for Cause" http://intranet.siu.edu/~docedit/policies/discipfa.html
**State of Illinois**: 30 Illinois Compiled Statute 605: State Property Control Act
[www.legis.state.il.us/legislation/ilcs/ch30/ch30act605.htm](www.legis.state.il.us/legislation/ilcs/ch30/ch30act605.htm)

**State of Illinois**: 110 Illinois Compiled Statute 100: University Faculty Research and Consulting Act Sec. 1. No full time member of the faculty of any State-supported institution of higher learning may undertake, contract for or accept anything of value in return for research or consulting services for any person other than that institution on whose faculty he serves unless (a) he has the prior written approval of the President of that institution, or a designee of such President, to perform the outside research or consulting services, such request to contain an estimate of the amount of time which will be involved, and (b) he submits to the President of that institution or such designee, annually, a statement of the amount of actual time he has spent on such outside research or consulting services. (Source: P. A. 76-1343.) [www.legis/state.il.us/legislation/ilcs/ch110act100.htm](www.legis/state.il.us/legislation/ilcs/ch110act100.htm)

**Federal**: Public Health Service: Title 42 Code of Federal Regulations (CFR) Part 50, Subpart F, "Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding is Sought," and Title 45 CFR Part 94, "Responsible Prospective Contractors"

**Federal**: Public Health Service: Federal Register, vol. 60, no. 132, Tuesday, July 11, 1995 (pages 35809-35819)

**Federal**: National Science Foundation: Federal Register, vol. 59, no. 123, Tuesday, June 28, 1994 (pages 3308-33312) and Federal Register, vol. 60, no. 132, Tuesday, July 11, 1995 (pages 35820-35823)

APPENDIX I.
Allowable Income-Generating Activities
(activities and sources of income excluded from the definition of "Significant Financial Interest")

The following are examples of non-University income-generating activities that are not considered to represent conflicts of financial or other interest and are exempt from reporting requirements as long as this income, when aggregated for the investigator and family over the next 12 months, does not constitute a Significant Financial Interest (i.e., exceed $10,000 in aggregate value or represent more than 5% ownership, or salary, royalties, or other paid income). While not posing conflicts of interest, these activities could, however, represent potential conflicts of commitment, if they are extremely demanding of time and effort.

- Honoraria for occasional lectures, seminars, workshops, presentations at professional conferences
- Honoraria or fees for review activities, including review of manuscripts and proposals, accreditation or program reviews, participation in review panels
- Honoraria or royalties from published scholarly or creative works or patents
- Honoraria, fees, or other remuneration for artistic performances, or sale of art or scholarly work
- Isolated, non-recurring consulting activities that result in payments not exceeding $10,000 from a single source during the reporting year
- Income from "passive" investments such as interest or dividends from banks, mutual funds, or stocks and bonds
- Monetary prizes and awards
- Uncompensated and volunteer activities, such as service on boards and committees of outside entities
- Preparing books, articles, software, and other scholarly/creative works relevant to University duties
APPENDIX II.
Income-Generating Activities Requiring Prior Approval and Potential Management, or Those That are Non-allowable

The following are examples of activities and relationships that represent potential or actual conflicts of interest, commitment, and/or Significant Financial Interests of an employee and his/her family. If there is a potential for such circumstances to arise because of external activities and relationships, the employee must obtain prior University approval (per Illinois law) and accept a plan to manage these conflicts. This list is not exhaustive.

Relations with the University:
- Failing to fully meet University obligations (e.g., meeting classes regularly, advising students outside of class, conducting research, participating in committee/governance/service activities) owing to involvement in external activities
- Using University resources (research labs or instrumentation, computer facilities, classrooms, etc.) in non-University activities without prior approval and without provision of suitable compensation to the University by the external or private entity. Property belonging to SIUC is legally state property and controlled by the State of Illinois Property Control Act.
- Using, without authorization or for personal gain, privileged information acquired in connection with the employee's sponsored activities

Research related:
- Involving University students or employees in consulting activities, activities supported by gift funds, and/or research sponsored by an entity in which the employee has financial interests
- Diverting research opportunities from the University to another academic institution, federal laboratory, business, or consulting entity.
- Using University resources to conduct research sponsored by an entity in which the employee or his/her family hold a Significant Financial Interest
- Conducting clinical trials or tests of products, devices, or services owned or controlled by a business in which the employee or his/her family has a financial interest or receives remuneration.

Business related:
- Making professional referrals to a business in which the employee or a member of his/her family has a financial interest
- Directing purchasing opportunities to a family-owned company or an associated entity.
- Accepting gifts or other emoluments (including "in-kind" compensation or special favors) from private organizations with which the University does or may conduct business
- Extending gifts or favors to employees of a sponsoring agency under circumstances that might reasonably be interpreted as attempting to influence the recipients in the conduct of their duties

Service-related:
- Serving in an executive or managerial capacity or holding Significant Financial Interest in for-profit or not-for-profit entities doing business with the University
- Serving on the Board of Directors or major advisory committee of an external entity that sponsors the employee’s research or provides gift funds for the use of the employee or his/her department or unit

Definition of Significant Financial Interests:
- Holding 5% or more ownership interest in a business, including any stock or stock option, but excluding any interest arising by reason of investment by a mutual fund, pension, or other institutional investment fund over which the employee does not exercise control
- Receiving or having the right to receive income from a business whether in the form of a fee, salary, allowance, forbearance, interest in real or personal property, dividend, royalty from licensing, rent, or other form of compensation, or any combination that exceeds $10,000 in monetary value
ANNUAL DISCLOSURE FORM ON
CONFLICTS OF INTEREST/COMMITMENT
Southern Illinois University Carbondale

Name_________________________ Title/Rank ________________________________

Department/Unit __________________________ College __________________________ Date ____________

Part I. Conflicts of Interest and Commitment Screening Questions

1. Are you engaged in consulting activities with any entity outside SIUC?
   NO  YES (please explain in an attached statement and estimate the number of days spent during the year)

2. Are you engaged in consulting activities or other financial relationship with a sponsor of your research?1
   NO  YES (please list and explain relationship in an attached statement)

3. Do you or any member of your family (spouse and minor children) have a managerial role or a significant financial interest2 or relationship with a company in a field of your research or that does business with SIU?
   NO  YES (please list and explain relationship in an attached statement)

4. Are you engaged in non-University professional or income-producing activities that involve Southern Illinois University students, faculty, or other staff?
   NO  YES (please list those involved and explain in an attached statement)

5. Do you or any member of your family have any other relationships, commitments, or activities that might present or appear to present a conflict of interest or commitment with your appointment at SIUC? Such relationships may include financial or fiduciary interests or uncompensated activities, whether or not you believe the conflict is manageable.
   NO  YES (please list and explain in an attached statement)

6. Do you or any member of your family plan to start a business within your field of expertise?
   NO  YES (please list and explain in an attached statement)

7. If so, would this activity involve the use of "Significant University Support" (e.g., SIUC research laboratories or instrumentation, computer facilities, classrooms, or other academic and general administrative facilities)?
   NO  YES (please explain in an attached statement, and provide a copy to the Dean and ORDA)

8. Intellectual Property (IP):
   a. Do any of the activities you describe involve, or are they likely to involve any IP developments that are covered by the Intellectual Property Policy?
      NO
   b. If yes, has this IP been disclosed to the University?
      NO (explain, and contact Tech Transfer office in ORDA) YES (date: __________)

9. Do you engage in any activities that result in a significant2 amount of non-university income?
   NO  YES (please describe activities in an attached statement and estimate the number of days to be spent on those activities in the next 9 or 12 months, depending on your appointment period with the University)

   ___ I have no activities that I am required to report. (Please check ONLY if you have no significant2 external income-producing activities AND no possible conflicts of interest or commitment.)

Part II. Affirmation

In submitting this form (including attachments), I affirm that I have read the University's Policy on Conflicts of Interest and Commitment3 and the information submitted is true to the best of my knowledge. NOTE: If significant changes in activities occur during the year, this form must be updated.

1 “Research” is defined at SIUC to incorporate the full range of scholarly and creative endeavors, and includes training and service activities.
2 “Significant financial interest” (SFI) is defined as those interests in business enterprises or entities that, when aggregated for the investigator and family, exceed $10,000 in gross value or represents more than 5% ownership, or salary, royalties, or other paid income that, when aggregated for the investigator and family over the next 12 months, are expected to exceed $10,000.2
3 The SIUC Policy on Conflicts of Interest and Commitment is available online at xxxxxx.
Annual Disclosure Form
Administrative Review of Conflicts of Interest/Commitment

Employee Name: ___________________________ Dept./Unit: ___________________________

Chair/Unit Officer Review:

__ Employee has reported no activity on the Annual Disclosure Form (ADF) and I do not know of any conflict of interest or commitment.

__ Employee has reported activity on the ADF. A conflict of interest or commitment may exist and is being monitored by the department/unit. An explanation of the monitoring plan is attached. (Sign below, retain a copy in department/unit files, and forward the original of all forms and explanations to the Dean. If the activity is IP-related, forward a copy of all forms to ORDA.)

__ Employee has reported activity on the ADF. A monitoring plan is attached, and in my opinion further review is recommended. (Sign below, retain a copy in departmental files, and forward the original of all forms and explanations directly to the Dean. If the activity is IP-related, send a copy of all forms to ORDA.)

Chair/Unit Officer signature: ___________________________ Date: ____________
ORDA Tech Transfer review signature, if needed: ___________________________ Date: ____________

Dean Review:

__ Approve the activity and the monitoring plan. No further review is needed. (Sign below, retain the original forms and explanations in the Dean’s files, and return a copy of this page to the department/unit.)

__ Further review is recommended. (Sign below. Keep a copy of forms and explanations. Forward the originals to the Provost for review by the SIUC Committee on Conflicts of Interest/Commitment. Notify department/unit.)

Dean/Director signature: ___________________________ Date: ____________

Review by Provost¹ and Conflicts of Interest/Commitment Committee. (Sign below and retain originals of all ADF forms and explanations in the Provost’s office.)

__ Approve activities with revised and dated monitoring plan. __ Do not approve activities.

COI/C Chair signature: ___________________________ Date: ____________
Provost¹ signature: ___________________________ Date: ____________

NOTE: The Director of ORDA will act as the University’s certifying official for reporting management plans for conflicts of interest to federal agencies when the employee has submitted a grant proposal.

¹ Employees may appeal the decision of the Provost through existing grievance policies.