

Utah Tech University Policy

157: Personal Conduct/Conflict of Interest



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I. Purpose

- I.1 Policy 157 is intended to promote the public interest and strengthen public confidence in the integrity of Utah Tech University (hereinafter referred to as “University”) by establishing standards and procedures for employees to follow when there are actual or potential conflicts of interest between their duties/responsibilities to the University and their private interests.
- I.2 Policy 157 is not intended to deny any employee opportunities available to all other citizens of the state to acquire private economic or other interests insofar as this does not interfere with the full and faithful discharge fulfillment of his/her University duties or disadvantage the University in any way. No outside professional or other service, activity, or enterprise that might interfere with his or her primary responsibility to the University should be undertaken by an employee.

II. Scope

- II.1 Policy 157 applies to all University faculty and all full-time and part-time employees of the University (“University Employees”), and any party conducting business with the University.
- II.2 Policy 157 applies to all official University business and the University Employees that represent the University. The public's impression of the University is determined by the actions of University Employees.
- II.3 Just as the University has responsibilities toward its employees by accepting or continuing employment at the University, all employees have an affirmative duty to comply with the standards of ethical conduct

described in Policy 157, all Federal and state regulations, laws, and administrative guidelines.

III. Definitions

- III.1 **Area specialist:** An employee of the University whose official job duties identify them as the “most responsible person” for the development, implementation, management, and/or oversight of a critical University function.
- III.2 **Business entity:** A sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity that carries on a trade or business, including parent organizations of such entities or any other arrangement in which an entity operates through a subsidiary.
- III.3 **Compensation:** Anything of economic value, however designated, which is paid, loaned, gifted, granted, given, donated, or transferred to any person or Business Entity for or in consideration of personal services, materials, property, or the like.
- III.4 **General Counsel/Compliance Officer:** A University employee assigned to assist the University's divisions, units, departments, administrators and employees in complying with applicable state and federal laws, regulations, and statutes, as well as Regents' and University policy.
- III.5 **Conflict of Allegiance:** When an employee's loyalty and devotion is divided between outside personal or professional obligations or activities and responsibilities to the University such that the appearance or potential for bias compromise an individual employee's objectivity, professional judgment or integrity, and/or ability to perform his/her responsibilities to the University is created.
- III.6 **Conflict of Interest:** A Conflict of Interest exists when a University employee owes a professional obligation to the University, which is or can be compromised by the pursuit of outside interests.
- III.7 **Conflict of Interest Disclosure Form (Disclosure Form):** The University form to be used to disclose actual or potential conflicts of interest.
- III.8 **Conflict of Time/Commitment:** When personal or professional activities external to the University position or appointment exceed reasonable time limits and adversely impact the employee's professional responsibilities. A Conflict of Time/Commitment can exist whether or not an employee

receives financial gain or remuneration for external or non-assigned activities.

- III.9 **Employee:** Any person who is employed by the University, whether full- or part-time. It also includes Investigators as defined by federal policies and individuals who are not paid on a project (i.e., volunteers).
- III.10 **Financial Conflict of Interest:** When an Employee or a member of his/her family has received, receives, or will receive Compensation or other payment for services, equity interests, or intellectual property rights that do or may conflict with the interests of the University; its students, faculty, or staff; or the State of Utah. If an Employee is in a position to influence a University direction or decision or to use University resources in such a way that may lead to the personal financial gain of the individual or of his/her family friend/ acquaintance, or designee, a Financial Conflict of Interest exists.
- III.11 **Monetary Compensation/Gift:** Includes money, honoraria, non-pecuniary gifts, excessive Compensation or non-commercial loans. For the purposes of Policy 157, a gift does not apply to occasional non-pecuniary gifts that have an insignificant monetary value, as defined by the *Utah Public Officers' and Employees' Ethics Act*, which would not tend to improperly influence an Employee in the discharge of his/her duties.
- III.12 **Family:** For the purposes of Policy 157, Family includes the individual, his or her blood or adoptive relatives, all extended relatives, all marital, partnerships or cohabitants; and all marital, partnerships or cohabitant's Family.
- III.13 **Friend/Acquaintance:** For the purposes of Policy 157, Friend/Acquaintance includes the Employee's' personal friendships and Family friendships, including but limited to business associates, close friends, neighbors.
- III.14 **Designee:** A person who has been designated to receive Monetary Compensation/gifts on behalf of a University Employee or a University Employee's Family or Friend/Acquaintance.
- III.15 **Intellectual Property:** Any ideas, inventions, technology, creative expression, and embodiments thereof, in which a proprietary interest may be claimed, including but not limited to patents, copyrights, trademarks, know-how, and biological materials.
- III.16 **Investigator:** The principal Investigator and all faculty, staff, postdoctoral appointees, residents or students, whether paid by the University or not,

who are responsible for the design, conduct or reporting of research or scholarly activities conducted in whole or in part at the University.

- III.17 **Management Plan:** A written plan of action developed between the University and an Employee by which a conflict or potential conflict can be managed, mitigated, or eliminated. A Management Plan typically requires the oversight of the Employee's immediate supervisor.
- III.18 **Financial or Other Interest:** Anything of monetary value, including but not limited to salary or other payments for services; equity interest (e.g., stocks, stock options, or other ownership interest); Intellectual Property rights (e.g., patents, copyrights, and royalties from such rights). "Financial or Other Interest" also means the holding of a position as an officer, director, agent, or Employee of a Business Entity. "Financial and other interest" includes such interest held by the Employee or by the Employee's Family Friend/ Acquaintance, or Designee. However, Financial or Other Interest does not include salary, royalties, or other Compensation received by the Employee from the University; income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; or income from service on advisory committees or review boards/panels for public or nonprofit entities.

IV. Policy

IV.1 Conditions of Employment

IV.1.1 Employees are expected to abide by the following conditions of employment:

- IV.1.1.1 Punctuality, willingness to be of service, courtesy, cooperation and other acceptable standards of behavior should be observed at all times.
- IV.1.1.2 Employees must be honest, demonstrating integrity in their business and personal dealings and in their public service commitments.
- IV.1.1.3 University business should not be discussed in social conversation.
- IV.1.1.4 The ability to maintain confidentiality is a condition of employment.

IV.1.2 It is the responsibility of each Employee to ensure that s/he understands the terms of his/her employment with the University

and to give a full measure of time and talent.

IV.1.3 The University recognizes that the personal life of an Employee is not an appropriate concern of the University, provided it does not affect the Employee's effectiveness in fulfilling his/her obligations.

IV.1.4 Employees will not solicit support for any political candidate, issue or referendum during working hours.

IV.1.5 Employees are not allowed to solicit for organizations or distribute literature during working hours.

IV.1.6 Employees may express their opinions to the media, such as in letters to the editor. But, unless explicit written approval is granted by the President, Administration or the Board of Trustees, Employees will not identify themselves as spokespersons for the University.

IV.1.7 Without such approval, use of the University letterhead is also prohibited.

IV.2 Conflict of Interest

IV.2.1 Employees are expected to avoid any situation where they use their University position to influence transactions to their personal benefit, or to conduct any business in which they have an interest, or to benefit Family, Friend/ Acquaintance, or Designee.

IV.2.2 In order that potential conflicts of interest can be evaluated, employees are expected to make full disclosure to their supervisor, in writing, of any involvement in situations where Conflict of Interest might exist. (see Procedure 6.1 for disclosing a Conflict of Interest)

IV.2.2.1 To fulfill the requirements of the Utah Public Officers' and Employees' Ethics Act (Utah Code Title 67 Chapter 16 §1 – 15), all Employees are required to disclose certain conflicts of interest, including disclosure to the state Attorney General's Office. The interests of members of an Employee's immediate household, including spouse and dependent children, may also create the need for disclosure and/or actions to mitigate an Employee's Conflict of Interest.

IV.2.3 Nothing in Policy 157 restricts the University, state or other authorities from taking criminal or civil action against an Employee

who violates Policy 157 and/or does not comply with an established conflict Management Plan. Nothing in Policy 157 prevents other individuals or entities from bringing suit against an Employee or third-party who violated Policy 157. In such cases, the Employee may not be entitled to the protections of governmental immunity.

IV.2.4 Some examples of Conflict of Interest situations include, but are not limited to:

IV.2.5 An Employee representing or influencing the University in its dealings with an organization in which s/he owns interest.

IV.2.6 An Employee personally benefiting from the purchase of surplus property if s/he participated in the University's decision to sell such property.

IV.2.7 University Employees or students given work assignments of a personal nature during hours they are working for the University.

IV.2.8 An Employee's private use of University equipment and facilities, without supervisory approval, unless rented under the same conditions as offered to non-employees.

IV.2.9 Personal use of supplies. When expendable supplies are used, Compensation to the University is required.

IV.2.10 An Employee using privileged information for personal gain.

IV.2.11 An Employee accepting valuable gratuities or special favors from an individual or an organization with which the University does or may do business.

IV.2.12 An Employee using a University position to obtain personal privileges or to provide credibility or support to a private undertaking.

IV.2.13 In the event of an employment of a relative, refer to Policy 303.

IV.3 Conflicts of Allegiance, Commitment, or Financial Conflicts

IV.3.1 A Conflict of Interest involving Financial Conflict of Interest, Conflict of Time/Commitment, and Conflict of Allegiance stipulates that an Employee do the following:

IV.3.1.1 Participate in their official capacity with respect to any

transaction between the University and a Business Entity in which the Employee has a financial interest;

- IV.3.1.2 Receive Compensation (in addition to regularly budgeted salary or wages for services to the University) as a result of, or in connection with, any transaction between the University and a Business Entity in which the Employee, Family, Friend/Acquaintance, or Designee has a financial interest;
- IV.3.1.3 Accept employment or engage in any business or professional activity which the Employee may be required or induced to disclose confidential information acquired by reason of the Employee's University position;
- IV.3.1.4 Disclose confidential information acquired by reason of the Employee's University position, or to use such information for the Employee, Family, Friend/Acquaintance, or Designee's gain or benefit;
- IV.3.1.5 Accept other employment, which might impair the Employee's independence of judgment in the performance of the Employee's University duties and responsibilities;
- IV.3.1.6 Knowingly receive, accept, take, seek, or solicit directly or indirectly, any Monetary Compensation/Gift or loan for themselves, Family, Friend/Acquaintance, or Designee if it tends to influence the discharge of the Employee's University duties or responsibilities, or if the Employee has recently been, now is, or in the near future may be involved in any action or decision directly affecting the donor or lender; or
- IV.3.1.7 Have personal investments in any Business Entity, which will create a conflict between their private interests and their University duties.

IV.4 Conflict of Interest involving Research, Intellectual Property, and Procurement

IV.4.1 Research and Scholarly Activity

IV.4.1.1 Disclosure is required when a principal Investigator or project director has a Financial or Other Interest that could affect the approval, design, conduct, or reporting of funded research.

IV.4.1.2 Disclosure is also required when all of the following apply:

- IV.4.1.2.1 An Employee or Family, Friend/Acquaintance, or Designee has a Financial or Other interest in a sponsor of research;
 - IV.4.1.2.2 The Employee has responsibility for designing, conducting, or reporting the research;
 - IV.4.1.2.3 The research will involve subordinates; and
 - IV.4.1.2.4 The Employee will provide an academic or employment evaluation of the subordinate based in part upon the subordinate's work on the research project, or restrictions will be placed on the publication rights of the subordinate.
- IV.4.1.3 Disclosure is required when an Investigator has significant Financial or Other interest in any clinical research.

IV.4.2 Intellectual Property Activity

- IV.4.2.1 Disclosure is required when an Employee is a named inventor of Intellectual Property owned by the University and the Employee has a Financial or Other Interest in a Business Entity related to the Intellectual Property.

IV.4.3 Procurement Activity

- IV.4.3.1 Disclosure is required when a University Employee, officer, or Family, Friend/Acquaintance, or Designee has a Financial or Other Interest in a Business Entity proposing to enter into a transaction with the University, and that University Employee, officer, or Family, Friend/Acquaintance, or Designee is in a position to influence the outcome of the University's decision on that transaction.
- IV.4.3.2 Disclosure is required when an Employee or Family, Friend/Acquaintance, or Designee has a significant or other interest in a Business Entity that provides goods or services, the University provides the same or similar goods and services, and the Employee is in a position to direct potential purchasers of the goods and services away from the University and to the Business Entity. This provision does not cover consulting faculty or staff.

IV.0 Confidentiality

- IV.0.0 Subject to Government Records Access and Management Act (GRAMA) and all other applicable state and federal laws, all records and information provided by an Employee for the purpose of disclosure and management of a conflict shall be considered a private and/or protected record under GRAMA and shall be used solely for the purpose of administering Policy 157, and may not be used for any other purpose unless required by law.
- IV.0.1 The University's Office of General Counsel, or the President's Designee, shall maintain a centralized confidential file of Conflict of Interest disclosures and Management Plans.
- IV.0.2 Improper disclosure of any such information by an Employee shall be deemed to be unethical behavior and may subject the Employee to discipline, in compliance with applicable University policy, up to and including termination.

V. References

- V.1 42 CFR Part 50, Subpart F (Responsibility of Applicants for Promoting Objectivity in Research)
- V.2 University Policy 303: Employment of Relatives
- V.3 University Policy 633: Faculty Rights and Responsibilities
- V.4 IRS, *FAQs for Government Entities Regarding De Minimis Fringe Benefits*
- V.5 Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards CFR Title 2, Subtitle A, Chapter II, Part 200, §200.112 and 113 Conflict of Interest and Mandatory Disclosures
- V.6 Utah Code §63-2 (2) (1992) *Government Records Access and Management Act (GRAMA)*
- V.7 Utah Code §67-16-5 (3) (a) *Utah Public Officers' and Employees' Ethics Act*

VI. Procedures

- VI.1 The University's Office of General Counsel, or the President's Designee, will facilitate the implementation of Policy 157.
- VI.2 Disclosure of Actual and Potential Conflicts of Interest
 - VI.2.1 While all conflicts of interest shall be disclosed to an Employee's immediate supervisor at the time of hire and annually thereafter,

every Employee shall also immediately disclose each actual and potential Conflict of Interest when such Conflict of Interest first arises. Disclosure is the key mechanism to bring actual and potential conflicts of interest to light for evaluation and possible oversight.

- VI.2.1.1 Disclosure consists of completing and submitting to an immediate supervisor a *Conflict of Interest Disclosure Form* prior to engaging in any potentially prohibited activities.
- VI.2.1.2 A *Conflict of Interest Disclosure Form* must be filed any time a new Conflict of Interest arises or at the first recognition that a potential Conflict of Interest may exist or has existed.
- VI.2.1.3 When making a Conflict of Interest disclosure, an Employee may include a proposed Conflict of Interest Management Plan.
- VI.2.1.4 Within three business days of receiving a disclosure form from an Employee, the supervisor will forward the form to the Office of General Counsel, who will review the disclosure form to determine if the Employee is required to file a Conflict of Interest Management Plan, and forward the disclosure to the appropriate Area Specialist and the Utah Attorney General.
- VI.2.1.5 Employees are encouraged to contact the University's Office of General Counsel with any questions or concerns regarding Policy 157 or any Conflict of Interest.

VI.3 Creating a Conflict of Interest Management Plan

VI.3.0 Area Specialist

- VI.3.0.0 Upon receipt of a *Conflict of Interest Disclosure Form*, or upon the University's own identification of a Conflict of Interest, the University's Office of General Counsel will determine if an Area Specialist is necessary to address the actual or potential conflict and then forward all information regarding the actual or potential Conflict of Interest to the Area Specialist for assessment and handling. The Employee and his or her immediate supervisor will be notified if the Office of General Counsel, or if an Area Specialist will assess and or handle the matter.

VI.3.0.1 The Area Specialist will determine if a Conflict of Interest exists. If no Conflict of Interest exists, then the appropriate parties shall be immediately notified and no further action will be required. However, if a conflict does exist, the Area Specialist must then determine if the proposed or engaged-in activity can perhaps be managed or shall instead be summarily prohibited. In the event the Conflict of Interest is such that the proposed or engaged-in activity is prohibited, the Area Specialist shall inform the appropriate parties immediately upon making such a decision, and the Employee shall cease and/or not engage in such activity. In the event the Conflict of Interest can perhaps be managed, a Management Plan shall be required.

VI.3.1 Conflict of Interest Management Plan Requirements

VI.3.1.0 Whether a proposed Management Plan is submitted by the Employee in conjunction with the disclosure of the Conflict of Interest, or whether a Management Plan needs to be developed, the Employee, the Employee's immediate supervisor, the University's Office of General Counsel and the Area Specialist, shall work together to develop an acceptable Management Plan. The Employee may not engage in any of the activities where a Conflict of Interest exists until the parties develop a Management Plan, acceptable to the Area Specialist, to manage the Conflict of Interest.

VI.3.1.1 Once a Management Plan is accepted, it will be distributed by the University's Office of General Counsel to the Employee, the Employee's immediate supervisor, the Area Specialist, and the appropriate vice president. The Employee is responsible for compliance with the Management Plan and the Employee's immediate supervisor is responsible for oversight of the Management Plan.

VI.4 Appealing a Conflict of Interest

VI.4.0 An appeal of any decision of an Area Specialist concerning the existence of a Conflict of Interest or acceptability (or non-acceptability) of a proposed Management Plan may be made to the Office of General Counsel within 10 business days of the employee's receipt of such a decision. In the event that a Management Plan decision is determined by the Office of General Counsel or the

Employee's respective Vice President, the appeal shall be made to the President or his or her Designee within 10 business days of the Employee's receipt of such a decision.

VI.4.1 All appeals must be in writing and should include all pertinent information and any related documents.

VI.4.2 A decision on the appeal shall be made within 10 business days and such decision shall be final and binding.

VI.5 Disciplinary Actions

VI.5.0 In the event of any confirmed violation of Policy 157 or of any Management Plan, the respective vice president may impose appropriate disciplinary actions, including but not limited to the following:

VI.5.0.0 Employee discipline proceeding (including but not restricted to: reprimands, fines, probation, suspension, dismissal, the freezing of sponsored program funds, etc.) pursuant to applicable disciplinary policies and procedures;

VI.5.0.1 Withholding payment owed under a procurement contract relating to the conflict;

VI.5.0.2 Legal action to rescind University contracts entered into in violation of Policy 157 or state law; and

VI.5.0.3 Other appropriate actions as required by state and federal law, such as but not limited to the filing of criminal complaints pursuant to the Ethics Act, and reporting Conflict of Interest violations to external agencies or sponsors.

VII. Addenda

VII.1 Financial Disclosure Form

Policy Owner: General Counsel
Policy Steward: General Counsel

History:

Approved 3/21/96

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DISCLOSURE STATEMENT

Pursuant to the Utah Public Officers' and Employees' Ethics Act (Utah Code § 67-16)

[NOTE: You are required to file this document and any additional required information with Utah Tech University's Office of General Counsel]

I, _____, being first sworn, do hereby

disclose as follows:

1. Address: _____

2. Job Title/Position: _____

3. Name of employing Agency: Utah Tech University

4. Date Employed/Appointed: _____

5. [IF APPLICABLE *This section applies to: (1.) Any Business Entity which is subject to regulation by the agency named above, or (2.) Transactions with any state entity in respect to which the officer or employee named above anticipates (a.) participating in his/her official capacity, or (b.) receiving Compensation*] I am an

officer, director, agent, employee, or owner of a financial interest¹ in the following Business Entity:

Name of entity: _____

Position Held: _____

* **Financial or other interest:** Anything of monetary value, including but not limited to salary or other payments for services; equity interest (e.g., stocks, stock options, or other ownership interest); intellectual property rights (e.g., patents, copyrights, and royalties from such rights). "Financial or other interest" also means the holding of a position as an officer, director, agent, or employee of a business entity. A Financial interest also means any financial interest held by an employee or a member of his/her family, or friend has received, receives, or will receive compensation or other payment for services, equity interests, or intellectual property rights that do or may conflict with the interests of the University.

Nature and value of interest held or Compensation (must exceed \$2,000.00 in value):

[See Utah Code Ann. § 67-16-7 & 8]

6. [IF APPLICABLE] Either for myself or another, I have received, accepted, taken, sought, or solicited a gift, loan, or other economic benefit tantamount to a gift, the value of which exceeds \$50, from the following persons or Business Entities who in the past, now, or in the future may be directly affected by governmental action that I am involved in.

Name and address of person or Business Entity:

Brief description of the gift, loan, or other economic benefit tantamount to a gift:

Brief description of the governmental action:

[See Utah Code Ann. § 67-16-5]

7. [IF APPLICABLE] I anticipate that I will receive, or agreed (10 or less days ago) to receive, Compensation for assisting a person or Business Entity in a transaction involving a state agency:

Name of state agency:
