

Conflict of Interest : 1:02:03:10

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Policy Area

Governance, Organization, and General Policies

Applicable Divisions

TCATs, Community Colleges, System Office, Board Members

Purpose

This policy is intended to define the general principles which should guide the actions of members of the Board and of employees; offer illustrations of activities which potentially constitute a conflict of interest; make Board members and employees aware of disclosure requirements related to conflicts of interest; describe the process by which those disclosures shall be evaluated and decisions rendered; and describe the appeals process regarding such decisions.

Definitions

- Conflict of interest - occurs when the personal interests, financial or otherwise, of a person who owes a duty to the Tennessee Board of Regents and its constituent Institutions (Regents and all employees) actually or potentially diverge with the person's professional obligations to and the best interests of the TBR and its Institutions.
- Conflict of commitment - occurs when the personal or other non-work related activities of an employee of the TBR and its constituent Institutions impair the ability of that employee to meet their commitments of time and energy to the TBR and its Institutions.
- Family member - includes the spouse and children (both dependent and non-dependent) of a person covered by this policy.
- Immediate family – for purposes of Section VI.A.1.b.(2)(c), means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

Policy

I. Objectives of the Conflicts of Interest Policy

- A. Members of the Tennessee Board of Regents and all employees of the TBR and its constituent Institutions all serve the interests of the State of Tennessee and its citizens, and have a duty to avoid activities and situations which, either actually or potentially, put personal interests before the professional obligations which they owe to the State and its citizens.

II. Pertinent Federal Regulations, State Laws, and TBR Policies

- A. The following lists are intended to indicate sources of information which may provide additional guidance regarding conflict of interest situations.
- B. This policy is intended to be consistent with all pertinent Federal and State laws, regulations, and policies, as well as with other TBR policies.
- C. To the extent that conflicts arise, Federal and State laws, regulations, and policies shall take precedence.
- D. The lists are not intended to be exhaustive and additional laws, regulations, and policies may be implicated in a given conflict of interest situation.

1. Federal Regulations

- a. The National Science Foundation (NSF) and the Department of Health and Human Services (HHS), acting through the Public Health Service (PHS) (which includes the National Institutes of Health (NIH)), have promulgated policies and regulations regarding conflicts of interest and disclosure of financial interests by investigators who receive funding from these Federal agencies.
- b. The NSF policy regarding researcher conflicts of interest is contained in Section 510 of NSF Publication 95-26, the Grant Policy Manual. The PHS regulations, upon which the NSF policy is modeled, are contained in the Code of Federal Regulations at 42 CFR 50.601 et seq. and 45 CFR 94.1 et seq.
- c. Other Federal agencies (e.g., the Veterans' Administration or the Food and Drug Administration) may require as a condition to a contract, disclosure and management of conflicts of interest (see, for example, Veterans' Administration Acquisition Regulation 852.209-70).

2. Tennessee State Law

a. Various statutes contained in the Tennessee Code Annotated (T.C.A.) are pertinent to the issue of conflicts of interest within the TBR System, including:

- (1) T.C.A. § 8-50-501, Disclosure statements of conflict of interests by certain public officials
- (2) T.C.A. § 12-2-208, Purchase by officer unlawful – penalty for violation
- (3) T.C.A. § 12-2-415, State surplus property disposition regulation
- (4) T.C.A. § 12-2-416, Violation of § 12-2-415
- (5) T.C.A. § 12-2-417, State employee violation – punishment
- (6) T.C.A. § 12-4-106, Prohibition against receiving rebates, gifts, money or anything of value -- Conflict of interest
- (7) T.C.A. § 12-4-101, Personal interest of officers prohibited
- (8) T.C.A. § 12-4-102, Penalty for unlawful interest
- (9) T.C.A. § 12-4-103, Bidding by state employees prohibited
- (10) T.C.A. § 12-4-104, Penalty for unlawful transactions
- (11) T.C.A. § 49-8-203(d), Powers and duties (of the Board of Regents)

b. It is significant to note that violation of some of these statutes may lead to criminal penalties (e.g., violation of T.C.A. § 12-4-103 is a Class E felony).

3. TBR Policies

a. The following TBR policies and guideline deal with issues which implicate conflict of interest situations:

- (1) TBR Policy 4:02:10:00, Purchasing Policy and Procedures
- (2) TBR Policy 4:02:20:00, Disposal of Surplus Personal Property
- (3) TBR Policy 5:01:05:00, Outside Employment
- (4) TBR Policy 5:01:06:00, Intellectual Property
- (5) TBR Guideline P:090, Nepotism

III. Supplementary Institutional Policies and Regulations

A. As each Institution may deem necessary and appropriate, TBR Institutions are authorized to develop additional Institution-specific policies, regulations, and procedures relating to conflicts of interest and conflicts of commitment, provided such policies and regulations are

consistent with Federal and State law and with this and other policies of the Tennessee Board of Regents.

IV. Applicability

- A. This policy shall apply to all persons serving as members of the Board of Regents and to all persons employed (either as full-time, part-time or temporary employees) by the Tennessee Board of Regents and its constituent Institutions.

V. General Principles

- A. It is the policy of the Tennessee Board of Regents that employees should avoid external commitments which significantly interfere with the employee's duties to the TBR and its constituent Institutions (conflicts of commitment). See also TBR Policy 5:01:05:00, Outside Employment. Disclosures of conflicts of commitment shall be made as required under Policy 5:01:05:00 and evaluated as indicated in that policy.
- B. It is the further policy of the Tennessee Board of Regents that both Regents and employees should avoid situations where the self-interests of the Regent or employee diverge from the best interests of the TBR and its Institutions (conflict of interest).
- C. The mere existence of either a potential or actual conflict of interest does not mean that such conflict must necessarily be eliminated.
 - 1. Where the potential detriment to the TBR and its Institutions is at most minor and inconsequential, and the conflict does not indicate violation of Federal or State law, regulation, or policy, those persons charged with evaluating disclosures should allow the activity to proceed without interference.
 - 2. For those situations which do not implicate Federal or State law, regulation or policy, the standard by which it should be determined whether a conflict of interest should be managed, reduced, or eliminated is whether that conflict would appear to a reasonable person to call into question the integrity or judgment of the affected Regent or employee.

VI. Situations and Activities Creating a Conflict of Interest

- A. In the following situations and activities, there is at least the appearance, and possibly the actuality, of an employee allowing his or her personal interests, and not the best interests of the TBR and its constituent Institutions, to affect that employee's judgments. This list is illustrative, and not exhaustive.

1. Self-dealing

- a. Situations in which a Regent or employee can appear to influence or actually influence an Institutionally-related decision from which that person or a member of that person's family stands to realize a personal financial benefit is self-dealing, and a conflict of interest.
- b. Examples of self-dealing activities are numerous, and include those listed below.
 - (1) Purchase of State-owned property by an employee absent fair and open bidding.
 - (a) It is unlawful for any state employee to purchase surplus state-owned property absent a fair and open bidding process (see T.C.A. § 12-2-208 and T.C.A. § 12-2-417).
 - (b) Such purchases are also prohibited under TBR Policy 4:02:20:00.
 - (2) Institutional purchases from businesses in which an employee or family member has a financial interest.
 - (a) T.C.A. § 12-4-103 declares that it is unlawful for any state official or employee to "bid on, sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the state of Tennessee" or "to have any interest in the selling of the same to the state" during that person's term of employment and for six months thereafter.
 - (b) Disclosure of any such transaction by an employee or member of the employee's family or by a business in which an employee or member of the employee's family has any significant (more than 4%) ownership interest or for which an employee or employee family member serves as an officer is required by this policy.
 - (c) T.C.A. § 12-4-106(b)(2013) declares that it is a conflict of interest for any person or any company with whom such person is an officer, a director, or an equity owner of greater than 1% interest to bid on any public contract for products or services for a governmental entity if such person or "immediate family" of such person is a member of a board or commission having responsibility for letting or approving such contract.

(d) For purposes of this section only, "immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

(3) Use of Educational Materials from Which a Faculty Member Derives Financial Benefit in That faculty Member's Teaching Activities.

(a) Any faculty member who wishes to use in his or her teaching activities educational materials (e.g. a textbook) which he or she has authored, or in which he or she otherwise stands to benefit financially from such use, a conflict of interest disclosure shall be made per Section VII of this policy.

(b) Whether the use of such materials shall be permitted shall be evaluated either under the terms of Institutional policy, or in the absence of such policy, by the Review Committee established under Section X of this policy.

(c) Such evaluation shall include consideration of suitable substitute materials and ensure that the needs of students are best served by use of the materials in which the faculty member has an interest.

(4) Acceptance of Gifts, Gratuities, or Favors

(a) Gifts. No employee shall knowingly solicit or accept, directly, or indirectly, on behalf of himself or herself or any member of the employee's household, for personal use or consumption any gift, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, from any person or entity that:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with the institution in which the individual is employed; or

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee.

(5) Exceptions

(a) The prohibition on accepting gifts in Section (4)(a) above, does not apply to:

- (i) A gift given by a member of the employee's immediate family, or by an individual, if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee;
- (ii) Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.
- (iii) Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business, including items distributed at tradeshow and professional meetings where vendors display and promote their services and products;
- (iv) Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or other event, including tradeshow and professional meetings, if the value of such items does not exceed fifty dollars (\$50.00) per occasion; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in Section VI.A.1.b.(4).
- (v) There may be circumstances where refusal or reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the institution. In such circumstances, the employee is to use his or her best judgment, and disclose the gift including a description, estimated value, the person or entity providing the gift, and any explanation necessary within fourteen (14) days to their immediate supervisor;
- (vi) Food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings;

(vii) Participation in institution or foundation fundraising and public relations activities, i.e. golf tournaments and banquets, where persons or entities identified in Section VI.A.1.b.(4) provide sponsorships; and
(viii) Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in Section VI.A.1.b.(4)

2. Inappropriate use of students or support staff

- a. Employees shall ensure that the activities of students or support staff are not exploited for the benefit of any external activity of the faculty member.
- b. Prior to assigning any such non-Institutionally related task (which is more than incidental or de minimus in nature) to a student or member of the support staff, an employee shall disclose such proposed activities and obtain approval.

3. Inappropriate use of State owned resources

- a. Employees may not make significant use of State owned facilities, equipment, materials or other resources, not otherwise available to the public, in the course of activities which are not related to the Institution and which are intended for personal benefit, without prior disclosure and approval.

4. Failure to disclose intellectual property

- a. TBR Policy 5:01:06:00 governs the rights and responsibilities which persons affiliated with the TBR and its Institutions have regarding intellectual property developed during the term of their affiliation with the TBR.
- b. Among the responsibilities enumerated in the policy is that of disclosure of inventions and those copyrightable works which may be reasonably expected to have commercial value which they have jointly or solely developed or created during their affiliation with the TBR and its Institutions.

VII. General Disclosure Requirements

- A. Persons to whom this policy applies who believe that a conflict of interest may exist either personally or with respect to another person covered by this policy shall make a written disclosure of the facts and circumstances surrounding the situation.

- B. No particular format is required, but the disclosure should adequately describe the pertinent facts and circumstances.
- C. For members of the Board, disclosure shall be made to the General Counsel.
- D. Employees of the System Office shall make disclosure to either their immediate supervisor or to the General Counsel.
- E. At the colleges, disclosures shall be submitted to the employee's immediate supervisor or other person designated by the President to receive such disclosures.
- F. Disclosures made by a President r shall be submitted online to the Tennessee Ethics Commission.

VIII. Special Disclosure Requirements for Researchers Applying For or Receiving NSF or PHS Funding

- A. Under the policies and regulations indicated under Section 2.1 herein, investigators seeking funding from either the National Science Foundation or the Public Health Service are required to disclose to the investigator's employer all significant financial interests of the investigator;
 - 1. That would reasonably appear to be affected by the research or educational activities funded or proposed for funding by the NSF or PHS; or
 - 2. In entities whose financial interests would reasonably appear to be affected by such activities.
 - a. Such disclosures must be submitted prior to the time the proposal is submitted to the Federal agency.
 - b. Further, such disclosures must be updated during the period of the award; either annually or as new reportable financial interests arise.
 - c. The Institution is responsible for eliminating or managing such conflicts prior to receipt of the award.
 - d. To facilitate such disclosures, the accompanying disclosure form (Exhibit 1) is available.
 - 3. Each Institution is responsible for determining if a grant, services, or other contract with Federal agencies other than the Public Health Service or the National Science Foundation requires disclosure and / or management of conflicts of interest, and for ensuring that any such requirements are met.

4. Disclosure of financial interests made pursuant to this Section VIII notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section VII, when specific conflict of interest situations arise.

IX. Special Disclosure Requirements for Regents and Certain TBR Employees

- A. Members of the Board of Regents, the Chancellor of the TBR, members of the senior staff of the TBR System Office (all Vice Chancellors and the General Counsel), the Presidents of all TBR institutions, coaches, assistant coaches and employees of athletic departments who are exempt from the provisions of the Fair Labor Standards Act are required to file a financial disclosure form within one month of their initial appointment and annually thereafter in January.
- B. Disclosure of financial interests made pursuant to this Section IX notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section VII, when specific conflict of interest situations arise.
 1. Members of the Board of Regents shall make their disclosure using a form as indicated in (Exhibit 2) submitted to the TBR Office of General Counsel.
 2. The Chancellor of the Tennessee Board of Regents system and the President of each college by the Tennessee Board of Regents are required by Tenn. Code Ann. § 8-50-501(a) (15) to file an online Statement of Disclosure of Interests Form with the Tennessee Ethics Commission at <https://apps.tn.gov/conflict/>, Form ss-8005 (State Officials). For the Chancellor and the Presidents this Statement of Disclosure will meet the requirements of this Policy.
 3. Senior staff at the TBR System Office are required to complete a Statement of Disclosure of Interest Form. That disclosure shall be made using the Tennessee Ethics Commission Form ss-8005 (Exhibit 3) and accompanying instructions and submitted to the TBR Office of General Counsel.
 4. Coaches, assistant coaches, exempt employees of the athletic department and other institutional personnel required to complete a disclosure form shall also use the Tennessee Ethics Commission Form ss-8005, Statement of Disclosure of Interest Form and accompanying instructions. The form shall be submitted to the institution's Human Resource Officer or other person designated by the institution's President.

X. Review of Disclosures

- A. Disclosures made under Section VII of this policy by a member of the Board of Regents, the Chancellor, or by a President shall be evaluated by the Board or a duly appointed committee thereof. A member of the Board making a disclosure shall not be entitled to vote regarding disposition of the disclosure.
- B. Disclosures made under Section VII of this policy by a person employed by the TBR System Office shall be evaluated by a committee composed of the General Counsel, the Vice Chancellor for External Affairs, and the Vice Chancellor for Business and Finance. If the disclosure is made by one of those three persons, that person shall not be entitled to vote regarding disposition of the disclosure.
- C. Each TBR Institution shall establish at least one Review Committee comprised of no fewer than three persons to receive and evaluate disclosures generated under Sections VII and VIII herein by employees of the Universities, Community Colleges, and Colleges of Applied Technology. Policies and procedures regarding such matters as selection of members, duration of membership, frequency of meetings, etc. shall be adopted by each Institution.
 1. A template Institutional policy is included herein as (Exhibit 4).
 2. An Institution which fails to explicitly adopt a policy shall be expected to follow the terms of the template policy.
 3. Following evaluation of the disclosure, the Committee shall render a decision regarding the issue(s) presented by the disclosure.
 4. Any disclosure which indicates an actual violation of law shall be forwarded to the President of the Institution along with the Committee's findings.
- D. Persons potentially committing a conflict of interest violation under consideration by a conflict of interest review Committee shall receive notice of the Committee's evaluation, and be given an opportunity to appear before that Committee.

XI. Sanctions

- A. Failure to observe restrictions imposed as a result of review of a conflict of interest disclosure or a knowing failure to disclose a conflict of interest may result in disciplinary proceedings under TBR and Institutional policy.

XII. Appeals

- A. Decisions made by the Board of Regents may not be appealed.
- B. Decisions made by the Central Office Review Committee may be appealed to the Chancellor.
Decisions of the Chancellor shall be final and binding.
- C. Decisions made by an Institutional Review Committee may be appealed to the President of the Institution. Decisions of the President shall be final and binding.

Exhibits

-  Exhibit 1 - Disclosure Form (docx /30.49 KB)
-  Exhibit 2 - Board Member Disclosure Form (pdf /10.07 KB)
-  Exhibit 3 - Staff Disclosure Form (docx /168.6 KB)
-  Exhibit 4 - Institutional Policy Template (docx /16.38 KB)

Sources

TBR Meeting March 20, 1992; TBR Meeting December 11, 1992; TBR Meeting June 11, 1998; TBR Meeting June 28, 2002; TBR Meeting September 26, 2003; TBR Meeting June 11, 2004; TBR Meeting September 25, 2008; August 20, 2014; ministerial revisions -Changed reference from T.C.A. 12-3-106 to 12-4-106 and made corrections to definitions changing relative to immediate family and corresponding different definitions to comply with change in statutes of 2013.

Related Policies

- Purchasing Policy
- Disposal of Surplus Personal Property
- Outside Employment and Extra Compensation
- Intellectual Property
- Nepotism

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