

Frequently Asked Questions (FAQs) about the COI/COC Policy

This collection of Frequently Asked Questions (FAQs) is not a formal part of the UMCP Conflict of Interest/Conflict of Commitment Policy or Procedures. Rather, it is intended to assist in interpretation of the Policy and Procedures. These FAQs should be considered general guidelines, recognizing that the specifics of any given situation may lead to a different conclusion. We anticipate that additional FAQs will be developed as the campus and its Conflict of Interest Committee (COIC) addresses specific cases. Accordingly, the COIC has the responsibility to update and maintain these guidelines in order to keep the campus community informed.

1. Overview

a. What does conflict of interest mean?

Conflict of interest is a legal term that encompasses a wide spectrum of behaviors or actions involving personal gain or financial interest. Under University policy, the term “conflict of interest” denotes situations in which a member of the University community is in a position to gain personal benefit (broadly construed) or financial advantage arising from their University position, either through outside professional activities or through their actions or decisions at the University, including research, administrative, or educational activities. Because University employees are also State employees, the Maryland State Ethics Law governing conflict of interest also applies.

b. What does State Ethics Law prohibit?

The conflict of interest provisions of Maryland State Ethics Law prohibit many activities and relationships (including employment, consulting and financial interests) between University employees and certain outside entities--particularly those that have other relationships with the University or the State or which may have an interest in the results of University research or other activities. Among other things, it also prohibits State employees from: participating in matters in which they (or certain family members or business entities) have an interest; soliciting and accepting gifts; using the prestige of their office or confidential information for private gain; and representing parties in State matters for contingent compensation. The conflict of interest provisions of Maryland State Ethics Law are codified in Title 15, Subtitle 5 of the State Government Article of the Annotated Code of Maryland [<http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0>].

c. But, aren't there special exceptions regarding financial conflict of interest for the University?

Yes. Activities associated with research or development and disclosed under this policy may be granted an exemption from the above restrictions. This encompasses basic or applied research or development, and includes the development or marketing of University-owned technology, the acquisition of services of an official or employee by an entity for research and development purposes, or participation in State economic development programs.

d. What does conflict of commitment mean?

Conflict of commitment arises when other professional interests and activities interfere with the individual's meeting basic job responsibilities to the University. This includes classroom teaching, mentoring, advising and development of students, participating in the intellectual life of the department and college, performing relevant research, and contributing to the oversight of academic programs. In other words, individual faculty and staff must assure that other professional activities do not distract from achieving a high level of effort and quality performance in University responsibilities including spending a significant part of his or her time

physically present and actively involved at the University (e.g., office hours for students, committee meetings, and research mentorship). Moreover, faculty have other responsibilities to others in terms of judging colleagues for promotion, evaluating research students, and determining grades for students in classes. It is essential that no aspect of such outside interests or activities influences the faculty member's judgment regarding these important responsibilities, or leads to impediments in the progress of other faculty members or students.

e. Why is the University concerned about conflict of interest and conflict of commitment in research?

The University has developed policies and procedures governing conflict of interest and conflict of commitment to protect the integrity of the research and academic processes that are the mission of the University, to ensure compliance with state and federal regulations, and to protect the faculty and the University in the conduct of research and scholarship.

f. Is there more attention focused on conflict of interest and conflict of commitment lately?

Yes. The federal government has taken a number of actions in the recent past that encourage universities to enter into agreements with the private sector (e.g. the 1980 Bayh-Dole Act, the 1986 Federal Technology Transfer Act, etc.). As a result, researchers are increasingly encouraged by government and academic employers to be entrepreneurs in commercializing new technologies and technology transfer, which can greatly increase the potential for conflicts of interest.

g. What are my reporting responsibilities to the University?

Each faculty and staff member is required to report outside activities in three ways. First, each individual must complete an Annual Report on Outside Professional Activities, which assists in maintaining a profile of commitments and involvements for the individual and for the campus in aggregate.

Second, each individual must report, in a timely fashion, any significant new outside activities to his/her supervisor (or unit head) before initiating those commitments. Such activities may range from volunteer, non-paid responsibilities to a professional group or publication, to direct consulting or entrepreneurial activities with potential for significant personal gain.

Third, if **either** the employee **or** the unit head believes there may be a potential for conflict of interest, the employee must complete a Conflict of Interest form to initiate the appropriate review process preparatory to eliminating or resolving the conflict.

h. What happens after I disclose that I may have a conflict of interest or a conflict of commitment?

Disclosure is the mechanism by which the interests of the University and its employees are protected in the context of potential conflicts of interest and commitment.

In the case of a potential conflict of interest, submitting a Conflict of Interest form begins a process that generally leads to either: (1) a determination that a particular conflict of interest is acceptable under a defined management plan; or (2) disapproval of the conflict as inappropriate and/or unmanageable, so that the activities should not be undertaken. There are actually three separate components of this process: a determination that there is a potential conflict of interest, a full disclosure of all relevant details by the employee, and a subsequent

judgment by the proper University authority that the conflict can be eliminated, reduced, or managed.

In the case of potential conflict of commitment, if **either** the employee **or** the unit head believes that a conflict of commitment exists, the issue is discussed and usually resolved at this level. The unit head must ensure that the employee will be able to meet his/her responsibilities and expectations to the University. If the proposed activities are incompatible with meeting these responsibilities, the request will be denied. If the unit head and employee are unable to resolve the matter, it will move to the next higher level of supervision.

i. How can I determine whether I may have a conflict of interest or commitment ?

The fundamentals of policy and procedure are described in the University's Conflict of Interest and Conflict of Commitment Policies (<http://www.president.umd.edu/policies/ii310a.htm>) and Procedures (<http://www.president.umd.edu/policies/ii310b.html>). Your unit head, having the primary administrative responsibility for identifying and managing potential conflicts of interest or commitment, and knowing your specific situation, is the best resource. The University's Conflict of Interest Committee is also a resource to help faculty and staff in these areas.

2. Conflicts of Interest

a. What is the relation between the University's Conflict of Interest Policy and Procedures and State Ethics Law?

The University's policy and procedures set forth the University's internal requirements regarding conflicts of interest and commitment for its employees. As State employees, University employees are also subject to the conflict of interest provisions of State Ethics Law. Although they prohibit many of the same things, the State Ethics Law and University policy exist independently of each other.

In general, the University is solely responsible for University policy and the State Ethics Commission has the sole authority to determine conflict of interest questions under State Ethics Law. However, the State Ethics Law permits the President of the University to grant exemptions from certain conflict of interest restrictions in the context of research or development activities or relationships. Therefore, to the extent that a potential conflict of interest is properly reviewed and approved under the University's procedures for resolving conflicts of interest in research or development, it is acceptable under State law and University policy.

If a potential conflict of interest under State Ethics Law arises outside of the research or development context, the State Ethics Commission should be consulted. If the potential conflict involves neither research or development nor State Ethics Law, it should be resolved under University procedures at the level of the unit head or, if necessary, the next higher level of supervision. If you have questions regarding the application of State Ethics Law and University policy, you may seek guidance from the University's Compliance Administrator (Sarah Archibald, x56278, sarchiba@umd.edu), the Office of Legal Affairs (301-405-4945) or directly from the State Ethics Commission (<http://ethics.gov.state.md.us/>).

b. How serious is a conflict of interest?

If you discover that you may have a potential conflict of interest, it is important to understand that you have not necessarily done anything wrong. The complex and demanding nature of research today can give rise to competing obligations and interests, and it is not always possible or even necessary to eliminate all perceived, potential, or actual conflicts of interest. The existence of a conflict is not necessarily a problem when both the individual and the institution are able to manage the conflicting interest in an appropriate manner.

c. So, who or what governs what I can do in situations that may involve a conflict of interest?

The State Ethics Law must always be followed because it applies to all state employees. If a potential conflict of interest arises outside of a research or development context, and does not involve State Ethics Law, it should be resolved under University policy through the normal supervisory chain. If a potential conflict of interest arises within a research or development context, University policies and procedures govern even if there is a possible violation of State Ethics Law since the law allows the University to grant itself exceptions under certain circumstances. Typically these conflicts are resolved through the COI Committee. If a potential conflict arises outside the R & D context and is prohibited by the State Ethics Law, the State Ethics Commission should be consulted. In these cases, faculty and staff may seek guidance about consulting with the Ethics Commission from the University's Office of Legal Affairs.

d. So, are there circumstances when I may participate in an activity or relationship that involves a conflict of interest or commitment?

Yes. But University policy requires faculty and staff to first fully disclose activities and relationships which may involve a conflict of interest or commitment that is actual, potential or apparent. In crucial areas such as financial gain, work commitments, and intellectual and personal matters, actual conflicts of interest require that special steps be taken to assure that such conflicts do not influence an employee's actions, decisions, or judgment in fulfilling their responsibilities to the University or the University's responsibility to fulfill its mission. Once disclosed, the current policy and procedures anticipate that, under most circumstances, the relationship or activity will be approved by the appropriate authority so long as the potential conflict can be eliminated, reduced, or managed.

e. What is meant by "managing" a conflict of interest?

Once a potential conflict of interest is identified, it is the joint responsibility of the faculty member and the Chair/Unit Head and/or Dean to devise an appropriate management plan that is satisfactory to the Conflict of Interest Committee. Management plans distance the person with the conflict from the conflicting roles that could give rise to concerns about bias or influence resulting in personal gain. This is typically accomplished through the insertion of other independent individuals into oversight roles to minimize the potential for bias or influence, or by the removal of the conflicted party from such roles.

As an example, suppose a faculty member's NIH sponsored research needs a unique toxin that is only manufactured by the faculty member's company. An appropriate management plan might include review by a third party of the purchase price in every transaction and a judgment that the cost is appropriate. As another example, suppose a faculty member owns 50% in a company that is the partner in a MIPS project. The faculty member is also listed as the PI and the faculty member's student will be performing the work at the company. At a minimum, the faculty member would be required to relinquish his/her role as PI, and a co-advisor for the student might also be considered in order for this arrangement to be approved.

f. Can a conflict of interest arise if there is no benefit to me personally?

Yes. A conflict of interest can arise if your activities could result in financial gain or other benefit to members of your family, close friends or business entities with which you or your family or friends have a relationship or financial interest. For example, a conflict of interest situation arises if a University employee hires, supervises or purchases goods or services from family members or close friends or business entities in which such family members or friends have an interest.

g. I am submitting a proposal with a deadline date close at hand that may involve a conflict of interest. Will my proposal be submitted to the sponsor before I complete the conflict of interest form and get an exemption approved?

Yes, your proposal can be submitted before potential conflict of interest issues are fully disclosed and resolved. However, you must disclose on the UMD Internal Routing Form for Proposals that a potential conflict exists, and you must complete and submit a Research or Development Interest Disclosure Form (disclosure form) in a timely fashion, so that the issues may be addressed well before a decision on the proposal from the agency is made. In most cases, a satisfactory resolution of the conflict of interest will occur which enables the award and the research to proceed. Timely completion of the disclosure form is critical, since University may not expend any funds (ORA cannot authorize an account to be established) until all identified potential conflicts of interest are eliminated or approved as exemptions under the State Ethics laws.

h. Are all research personnel on a project subject to this conflict of interest policy?

Yes. Because the PI and the Co-PIs (key personnel) have the authority to direct the project, they are usually the focus for concerns about their relationships with outside entities that become involved with the project.

i. Is the Research or Development Interest Disclosure Form (disclosure form) confidential?

No, but some information provided in connection with the COI Form may be. Within the University, the form will generally be disclosed on a need to know basis. However, under State law certain disclosure forms are required to be submitted to the State Ethics Commission and, like all other University records, these disclosure forms are subject to possible public disclosure under the Maryland Access to Public Records Act. However, certain types of information submitted on or in connection with the form (e.g., research data, confidential commercial or financial information, trade secrets, etc.) may be exempt from disclosure under the Act. Any such information which you consider confidential should be submitted separately from the disclosure form and clearly marked as "confidential" at the time of submission. There are some items which are NEVER protected as confidential information; these include University salaries, the nature of University research projects, budgets for the University research projects, names of entities sponsoring University projects, terms of research agreements and license agreements with the University, disclosure forms, and any exemptions granted.

j. Do these conflict of interest policies and procedures satisfy the current National Science Foundation (NSF) and Public Health Service (PHS) federal disclosure and reporting requirements?

Yes. You do not need to file anything else to comply with the federal requirements.

3. Conflicts of Commitment

a. How does the University determine whether I am meeting my University responsibilities?

This is monitored primarily by your unit head or supervisor, assisted by University processes such as the Faculty Review Form, the Faculty Workload Report, and the Staff PRD process. Since conflicts of commitment are handled within the units, they are not addressed by the Conflict of Interest Committee.

b. What are the consequences if I don't meet my University responsibilities?

Meeting University responsibilities is an essential requirement for all employees. Failure to meet University job responsibilities can adversely affect salary, job assignments, and formal performance evaluation as represented in the individual's personnel folder. In the most serious cases, failure to meet University responsibilities can lead to termination for staff or faculty, either tenured or not.

4. Outside Consulting and Other Professional Activities

a. How much outside consulting and other activity may I engage in?

Consulting and other outside activities by faculty and staff are limited by the requirements of their position and responsibilities to the University, not by specific time constraints. Individuals should recognize that quality performance and effort levels are expected of all faculty and staff in meeting their commitments to the University, including research, teaching, advising, service and other job duties. Furthermore, the individual must spend a significant part of his or her time physically present and actively involved at the University (e.g., office hours for students, committee meetings, and research mentorship).

The nature of these expectations is conveyed through University administrators and supervisors, either in regular meetings and/or through performance plans and evaluations. Beyond meeting these expectations of effort, availability and quality performance, the individual may devote whatever time and effort he/she chooses to outside activities. No outside activities should be undertaken if the individual cannot meet the expectations of his/her University position.

b. May I use University resources in my consulting or other outside activities?

Modest and incidental use of University resources (such as telephone, e-mail, photocopier, etc.) is permitted for outside activities of faculty and staff. If more significant resources may be needed or desired, it is the obligation of the individual to contact the unit head to arrange (in advance) for proper compensation to the University. University staff should not be utilized in connection with outside activities.

c. May I be a participant or principal in an outside company which works in the domain of my research?

Yes. Indeed, the commercial development of University research is encouraged, and faculty and staff can play key roles in achieving this. The University's Conflict of Interest and Conflict of Commitment Policies and Procedures are in place to assist in guiding such dual roles of faculty and staff members where there is a question of potential conflicts. The key concern here is to protect and preserve the integrity of the research and academic processes that are the mission of the University and to ensure compliance with state and federal laws.

d. How should I handle situations in which I have a dual role, representing on the one hand an outside company or my own consulting interests and on the other hand my role as a University employee?

This can happen in a number of ways and must be managed to balance the interests of the University and your outside involvements. The key principle is that your outside commitments should not detract from your responsibilities or the legitimate interests of the University, since your first responsibility is to the University. This does not preclude the accrual of benefit to your outside interests.

e. May I have a consulting arrangement or participation in a company which also funds my sponsored research through contracts or grants?

Not usually. This situation is a classic conflict of interest situation and must be disclosed through a Research or Development interest Disclosure form (available at <http://ora.umd.edu/forms/umd#4>). This disclosure must report the full details of the consulting arrangement. Under rare and unusual circumstances, and with a compelling rationale, an

appropriate management plan can be used to justify an exemption from the State Ethics Law. Such a plan must protect against undue influence upon the research, assure that no conflict of commitment arises because of imbalance of your efforts in favor of the outside interest, and avoid even the appearance that research objectivity could be compromised.

f. How should I handle situations in which my outside interests could conflict with University interests in competing for external research funds?

Various R&D funding opportunities are available to both academic and private commercial entities and this sometimes creates challenges. As an example, if you are involved in a company whose business domain overlaps your academic field of research, both the company and your research program could apply and compete for the same R&D funding. A good way to balance your primary responsibility to the University with your private interest, and the University's encouragement of your outside business activity, is to distinguish between the different missions of the entities involved.

If the R&D opportunity is primarily in research suitable for participation by students and contributing to their education, pursuing the opportunity as a University research proposal is most appropriate. If the opportunity lies more with developing existing knowledge toward commercial products, it is less suitable for student involvement and not as close to the scholarly research of academia. Often, the opportunity involves both, and a partnership between your University research group and the company may be appropriate. Being mindful of the serious concerns covered in 4e (above), project management on the company side should be the responsibility of others involved in the company.

No matter which course is taken, it is critically important to disclose the pursuit of such opportunities to your Chair/Unit Head. Such disclosure protects you in representing the portfolio of your commitments fully and openly to the University.

g. When my name is used in outside professional activities, what reference to my University position is appropriate?

Although it may be appropriate factually to identify yourself with reference to your University affiliation and position in connection with some outside activities, care must be taken to ensure that such identification does not in any way convey or suggest endorsement by the University of your outside activities or their recommendations or results.

5. Licensing of University Technology and Intellectual Property (IP)

a. Why is the University concerned about these areas?

Licensing transactions present many potential conflicts of interest and commitment, especially those involving start-up companies with which the institution and inventors have a continuing relationship. These conflicts generally arise in the following areas: establishment of a company based on a license for University-owned technology, distribution and management of equity in that company to the inventor and the University, provision of sponsored research from the company back to the University, management of research in areas closely related to licensed technology, and supervision of students and other employees in the context of the relationship between the University and the start-up (also related to conflict of commitment).

b. As an inventor or author of intellectual property (patents, copyrights) owned by the University, may I be involved in negotiations concerning licensing of this intellectual property?

If the individual inventor/author has no relationship to a company considering the licensing of the IP, it is proper for him/her to be involved; indeed, participation is encouraged because the inventor/author likely holds the best knowledge of the subject and its applications and marketplace.

If the individual inventor/author is involved with a company considering the licensing of the IP, he/she should not be involved in licensing discussions beyond answering specific questions from the University (e.g., its Office of Technology Commercialization). More active involvement could be considered a conflict of interest and/or commitment on the part of the individual, whose allegiance would be divided, and interests in opposition to those of the University.

c. If I am an inventor or author of IP, when does the University or other party own that IP?

IP ownership is governed by University intellectual property policies. You should remember that, without prior approval, a faculty or staff member may not enter into any agreement in connection with outside activities which conflicts with the University or Board of Regents policies on intellectual property.

d. When the University owns IP which I generated, do I receive any financial benefit?

Yes, even when the University owns it, University policy and the procedures of the Office of Technology Commercialization provide for financial reward to the individual inventor/author in such cases. See the University intellectual property policy for details.

e. If I have generated IP which is owned by the University, may I participate in an outside company to commercialize that IP?

Yes. Indeed, this may serve to benefit the University as well as you. However, you should not be involved in licensing negotiations between the company and the University beyond responding to questions from the University (e.g., its Office of Technology Commercialization).

f. How should I handle situations in which my outside interests could conflict with University interests in my development of intellectual property?

This situation may arise when your outside company or consulting work lie in a domain which overlaps your University research area. For example, you may have a new idea for intellectual property, and a question may arise as to which entity you were working for at the time you generated the idea. You have the potential for personal benefit in either case, but the interests of the company, your consulting business, and the University may be in conflict.

In some situations, there may be arrangements in place which clarify ownership of your time and effort, and therefore of the intellectual property, at the time it was generated. For example, you may have a specific consulting assignment spelled out in a contract, or a product development roadmap in the company, which detail - in a very specific way compared to the plan for your research program and contracts - your responsibility or opportunity to develop the intellectual property under question. Absent this evidence, the University or your sponsored research funding agency may have a significant claim to the intellectual property. And the larger the value of the intellectual property, the more you can be assured that interested parties with any plausible claim to its ownership will pursue their claims in a legal context.

Given the potential delicacy here, two actions are recommended. First, you should disclose the situation to your Chair or Unit Head, and prepare a Research or Development Interest Disclosure Form if indicated. Second, you may wish to consult the Office of Technology Commercialization and/or the Conflict of Interest Committee for advice. This in turn can not only protect your position with regard to Conflicts of Interest, but it can help to maintain a proper relationship between the University and your outside business interests.

6. Responsibilities to University Students, Staff, and Faculty

a. May I engage other staff members or faculty in my outside consulting, business, or professional service activities?

Yes, but only under appropriate conditions because it may involve a conflict of interest or commitment. Such involvements should be disclosed and approved in advance. The key issues are: (1) that there is no pressure or requirement for them to become involved; (2) that your judgment of their job performance at the University is unaffected by their participation or lack thereof in the outside activity, or by their performance in it; and (3) that the outside activities do not compromise their ability to meet their University responsibilities.

b. May I engage students in my outside consulting, business, or professional service activities?

Yes, but only under appropriate conditions because it may involve a conflict of interest or commitment. Such involvements should be disclosed and approved in advance. The key issues are: (1) that there is no pressure or requirement for them to become involved; (2) that your judgment of their research and/or classroom progress is unaffected by their participation or lack thereof in the outside activity, or by their performance in it; and (3) that the outside activities do not compromise their progress toward completion of courses, research, or degrees.

c. Is it appropriate for my own students (from my research group or my class) to be involved in my outside consulting, business, or professional service activities?

No. It usually is inappropriate because the potential for conflict – and for the appearance of conflict – is high. The best policy is to avoid involving your own students, and not to take on students to your research group with whom you are already involved in outside activities. Similarly, it is inadvisable to invest in business ventures in which your students or subordinates are already involved. If using students is unavoidable, another faculty member should be responsible for monitoring their University performance.

7. Responsibilities to the Profession

a. Should I review grant proposals or manuscripts for publication in professional journals from companies in which I have a financial stake?

No. Generally, if you have a direct connection to the company as an investor, participant, or principal, a potential conflict of interest and/or commitment could exist. On the other hand, if your stake in the company is diffuse or indirect (e.g., if the company is large or part of a diversified mutual fund portfolio), there may be no conflict of interest, or the conflict may be manageable. Again the key is full disclosure and approval under University policy.