



## 12 Conflict of Interest

Approved by Board of Trustees

Effective Date: **TO BE PRESENTED TO BOARD** - \_\_\_\_\_, 2018

Responsible Division: President

Responsible Office: Office of the University Counsel

Responsible Officer: University Counsel

### I. Purpose

All employees of Middle Tennessee State University (MTSU or University) serve the interests of the State of Tennessee, and its citizens, and have a duty to avoid activities and situations that, either actually or potentially, put personal interests ahead of the professional obligations that they owe to the University. All employees serve a public interest role and thus have a clear obligation to conduct all affairs of the University in a manner consistent with this concept.

This policy is intended to (1) define the general principles that guide the actions of MTSU employees, (2) offer illustrations of activities that potentially constitute a conflict of interest, (3) make employees aware of disclosure requirements related to conflicts of interest, (4) provide a means of managing and resolving conflicts of interest, and describe the process by which those disclosures shall be evaluated and decisions rendered, and (5) describe the appeals process regarding such decisions.

### II. Scope

This policy applies to all persons employed (either as full-time, part-time, or temporary employees) by MTSU.

### III. Definitions

- A. Conflict of Interest. A conflict of interest occurs when the personal interests, financial or otherwise, of a person who owes a duty to MTSU actually, or potentially, diverge from the person's professional obligations to, and the best interests of, MTSU. For the purposes of this policy, a conflict of interest with a vendor or contractor also creates a conflict of interest with any sub-vendor or sub-contractor of the vendor or contractor.

- B. Conflict of Commitment. A conflict of commitment occurs when the personal or other non-University related activities of an employee impair the ability of that employee to meet his/her commitments of time and energy to the University.
- C. Family Member. The spouse and children (both dependent and non-dependent) of a person covered by this policy.

#### IV. Pertinent Laws

The following lists are intended to indicate sources of information that may provide additional guidance regarding conflict of interest situations. This policy is intended to be consistent with all pertinent federal and state laws, regulations, and policies, as well as with MTSU policies. To the extent that conflicts arise, federal and state laws, regulations, and policies shall take precedence. The lists are not intended to be exhaustive, and additional laws, regulations, and policies may be implicated in a given conflict of interest situation.

- A. Federal regulations related to research. For information and guidance related to federal funded research and applicable federal regulations, see [Policy 404 Conflict of Interest for Externally Funded Projects](#).
- B. Other federal agencies (i.e., 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).
- C. Tennessee state laws. Various state statutes are pertinent to the issue of conflicts of interest at MTSU including, but not limited to, the statutes listed below. It is significant to note that violation of some of these statutes may lead to criminal penalties.
  1. T.C.A. § 8-50-501, Disclosure statement of conflicts of interest by the President of MTSU.
  2. T.C.A. § 12-2-208, Purchase by officer unlawful penalty for violation.
  3. T.C.A. §§ 12-2-415 – 417, State surplus property disposition.
  4. T.C.A. § 12-4-106, Prohibition against receiving rebates, gifts, money, or anything of value – Conflict of interest.
  5. T.C.A. § 12-4-101 – 104, Personal interest of officers or employees prohibited; bidding prohibited.

**V. Other Relevant Policies.** The following non-exclusive list of policies and procedures deal with issues that implicate conflict of interest situations:

- A. Policies and procedures related to purchasing, including, but not limited to:
  - 1. [Policy 632 Purchasing Card \(P-Card\) Program](#)
  - 2. [Policy 637 Cash Purchases and Petty Cash Funds](#)
- B. Policies and procedures related to disposition of State property, including, but not limited to:
  - 1. [Policy 140 Intellectual Property](#)
  - 2. [Policy 404 Conflict of Interest for Externally Funded Projects](#)
  - 3. [Policy 685 Disposal of Surplus Property](#)
  - 4. [Policy 814 Outside Employment, Extra Compensation, and Dual Services Agreements](#)
  - 5. [Policy 816 Nepotism](#)

## **VI. Conflict of Interest**

- A. Employees should avoid situations where the self-interests of the employee diverge from the best interests of the University (conflicts of interests).
- B. The mere existence of either a potential or actual conflict of interest does not mean that such conflict must necessarily be eliminated. All actual and potential conflicts of interest must be disclosed and evaluated by the Conflicts Review Committee.
- C. In the following situations and activities, there is at least the appearance, and possibly the actuality, of an employee allowing his/her personal interests, and not the best interests of MTSU, to affect that employee's judgment. This list is illustrative rather than exhaustive.
  - 1. Self-dealing. Situations in which an employee can appear to influence, or actually influence, a University-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. Examples of self-dealing activities are numerous and include those listed below.
    - a. Purchase of State-owned property by an employee, absent fair and open bidding. It is unlawful for any State employee to purchase surplus State-owned property, absent a fair and open bidding process (T.C.A. §§ 12-2-208 and 12-2-412; [Policy 685 Disposal of Surplus Property](#).)

- b. University purchases from businesses in which an employee has a financial interest (T.C.A. § 12-4-103). Employees are prohibited from bidding on, selling, or offering to sell, any merchandise, equipment, material, or similar commodity to the State of Tennessee during their employment, or for six (6) months thereafter, or to have any interest in the selling of the same to the state. Violation of this provision is considered a Class E felony.
  - c. Certain bids on State contracts (T.C.A. § 12-4-106(b)). It is a conflict of interest for any employee, or any company with whom such employee is an officer, director, or equity owner with more than one percent (1%) interest, to bid on any public contract for products or services for the University, if that person or his/her spouse, dependent children, stepchildren, or relatives related by blood or marriage is responsible for approving such contract for the University.
  - d. Use of educational materials from which a faculty member derives financial benefit. Any faculty member who wishes to use in his/her teaching activities educational materials (i.e., a textbook) that he/she has authored, or in which he/she otherwise stands to benefit financially from such use, has a conflict of interest that must be managed. The faculty member shall make a conflict of interest disclosure to the faculty member's Department Chair. The disclosure must adequately indicate the facts and circumstances that would support the particular textbook being used. Whether the use of such materials shall be permitted shall be evaluated by the Chair, along with the department textbook committee. 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.
2. Acceptance of gifts, gratuities, or favors.
- a. No employee shall knowingly solicit or accept, directly or indirectly, on behalf of himself/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:
    - (1) Has, or is seeking to obtain, contractual or other business or financial relations with the institution in which the individual is employed; or
    - (2) Has interests that may be substantially affected by the performance or nonperformance of the employees.
  - b. Exceptions. The prohibition on accepting gifts in this section does not apply to:

- (1) A gift with a non-business purpose, motivated by a close personal friendship and not by the employee's position with the University;
  - (2) Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
  - (3) 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;
  - (4) 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 that the value of the gift may not be reduced below the monetary limit by dividing the cost of the gift among two (2) or more persons or entities. The measure is the value of the gift received by each individual person;
  - (5) 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 University. In such circumstances, the employee is to use his/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 his/her immediate supervisor;
  - (6) 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;
  - (7) Participation in University or Foundation fundraising and public relations activities, i.e. golf tournaments and banquets, where persons or entities provide sponsorships; or
  - (8) 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 from whom the employee would normally be prohibited from accepting a gift.
3. Inappropriate use of students or support staff. Employees shall ensure that the activities of students or support staff are not exploited for the benefit of any non-

University related activity of the faculty or staff member. Prior to assigning any such non-MTSU related task or a task not directly related to the employee's job duties (which is more than incidental or de minimis in nature) to a student or member of the support staff, an employee shall disclose such proposed activities and obtain approval through his/her supervisor and the Office of Human Resource Services. Under no circumstances shall students and support staff be used to perform personal activities for the faculty or staff member while the student's or support staff's time is being paid by the University.

4. Inappropriate use of State or University owned resources. Employees may not make significant use of State or University facilities, equipment, materials, or other resources, not otherwise available to the public, in the course of activities that are not related to MTSU, without prior disclosure and approval. Employees making more than incidental or de minimis use of University owned resources must reimburse MTSU for such use at a fair market rental rate to be established by the Business Office at the time of the request or discovery of such use.
5. Failure to disclose intellectual property. [Policy 140 Intellectual Property](#) governs the rights and responsibilities, which persons affiliated with MTSU have, regarding intellectual property developed during the term of their affiliation with MTSU. Among the responsibilities enumerated in that policy is disclosure of inventions and those copyrightable works that they have jointly or solely developed or created during their affiliation with MTSU. The author/inventor has the responsibility to provide disclosures pursuant to both [Policy 140 Intellectual Property](#) and this policy.

## VII. Conflict of Interest Disclosure Requirements

- A. Allowing a conflict of interest to exist without being addressed in an appropriate manner is a serious violation of an employee's duty to the University and can be a violation of state or federal law. Some conflicts of interests are even punishable as criminal offenses under state law.
- B. Unless a different procedure is specified by state statute or in this policy:
  1. New employees will be provided a copy of this policy upon employment. If upon reading the policy, the employee believes a conflict of interest exists they should complete the disclosure form and submit it to University Counsel within 30 days of employment.
  2. All employees will annually receive a [Conflict of Interest Disclosure Statement](#). Employees must disclose the facts and circumstances surrounding a situation that might involve a conflict of interest, to include the nature and extent of their financial interest(s) in any entity that does business with MTSU.

3. Employees must submit the completed [Conflict of Interest Disclosure Statement](#) by the prescribed deadline, if they are, or believe they might be, in a conflict of interest position.
  4. At any time throughout the year, if an employee feels that a potential conflict of interest has developed since the annual report, the employee is responsible for completing and submitting an updated [Conflict of Interest Disclosure Statement](#).
  5. Faculty utilizing their authored books or published works in a course(s) they teach, must additionally complete the [Conflict of Interest Checklist](#).
- C. Investigators seeking federal funding must make written disclosures as indicated in [Policy 404 Conflict of Interest for Externally Funded Projects](#) and related procedures. Disclosure of financial interests made pursuant to [Policy 404 Conflict of Interest for Externally Funded Projects](#) and related procedures notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under this policy when specific conflict of interest situations arise.
- D. Special disclosure requirements for the President
1. The President is required to file a financial disclosure statement within one (1) month of his/her initial appointment and annually thereafter in January. Disclosure of financial interests made pursuant to this provision notwithstanding, such disclosure does not eliminate the responsibility for making disclosures when specific conflict of interest situations arise. In such cases, the President must make an appropriate disclosure to the Office of the University Counsel.
  2. The President's disclosure shall be in the form prescribed by, and submitted as directed by, the Tennessee Ethics Commission.
  3. Presidents Emeriti must submit any potential conflict of interest to the Office of the University Counsel.
- E. Review of Disclosures
1. The President's disclosure shall be evaluated by the Board of Trustees or a duly appointed committee thereof.
  2. Employee made disclosures shall be evaluated by MTSU's Conflict of Interest Committee.
- F. Conflict of Interest Committee

1. The Conflict of Interest Committee (Committee) is an advisory committee and resides under the President's Office. The primary members of the Committee shall be representatives from the Offices of the University Counsel, Internal Audit, Compliance and Enterprise Risk Management, and Business and Finance. Other areas of the University, such as Human Resource Services, Academic Affairs, Student Affairs, etc., may be brought in to assist the Committee to provide additional insight and expertise, depending on the nature of the disclosure submitted.
2. Consistent with this policy, the Committee will evaluate conflict of interest disclosures and situations, determine whether a conflict of interest exists, and advise on what actions may be required to manage, reduce, or eliminate an employee's conflict of interest.
3. If the Committee determines that an employee has a conflict of interest, the employee shall receive notice of the Committee's evaluation and be given an opportunity to appear before that Committee, before the Committee forwards its decision to the President.
4. Any disclosure that indicates an actual violation of law shall be forwarded to the President along with the Committee's findings.
5. The President will determine the appropriate action(s) to be taken.
6. For any conflict that is not a violation of federal or state law, the Committee is permitted to make a determination that the conflict is de minimus and is permitted to continue; to place restrictions on the employee to manage the conflict; or, to instruct the employee to eliminate the conflict. The Committee will provide the employee its decision in writing.

#### G. Appeal

1. An employee may file an appeal with the President within ten (10) business days, absent good cause, of receipt of the Committee's decision.
2. The President shall notify the employee in writing of his/her decision within ten (10) business days, absent good cause.
3. The President's decision shall be final and binding.

#### H. Sanctions

1. Failure to follow any law or University policy relating to conflicts of interest, including 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 action, including, but not limited to, termination.

2. The Committee will refer violations to the appropriate Vice President or Provost for appropriate action, if any.

### **VIII. Conflict of Commitment**

The primary work related commitment of an employee's time and energy should be to the University. Employees should avoid external commitments that significantly interfere with his/her performance of, or impair his/her independence of, judgment in the performance of the employee's duties to MTSU. See [Policy 814 Outside Employment, Extra Compensation, and Dual Services Agreements](#). Disclosures of conflicts of commitment shall be made as required in that policy and be evaluated as indicated in that policy.

### **IX. Interpretation**

The President or designee has the final authority to interpret the terms of this policy.

Forms:

[Employee Conflict of Interest Disclosure Statement](#)

[Conflict of Interest Checklist](#)

Revisions: June 5, 2017 (original policy); \_\_\_\_\_, 2018.

References: T.C.A. §§ 8-50-501; 12-2-208; 12-2-412; 12-2-415 – 417; 12-4-106; 12-4-101 – 104; Policies 140 Intellectual Property; 404 Conflict of Interest for Externally Funded Projects; 632 Purchasing Card (P-Card) Program; 637 Cash Purchases and Petty Cash Funds; 685 Disposal of Surplus Property; 814 Outside Employment, Extra Compensation, and Dual Services Agreements; 816 Nepotism.