



Working Paper on Conflict of Interest Executive Summary

This working paper is intended to help colleges and universities strengthen institutional policies and practices with regard to ethical institutional practices, including identification and management of conflicts of interest.

The report begins with the premise that an institution's reputation for integrity is its most precious asset. To a very large extent, higher education institutions throughout the country carry out their missions in a manner consistent with the highest ethical standards and have in place sound policies and practices to ensure ethical conduct. Yet in the current environment, in which colleges and universities are under increased scrutiny and legal norms are evolving, even as institutions are expected to engage in more transactions of greater complexity than before, institutional leaders may benefit from guidance on this important subject. Moreover, in the past year questions have been raised about whether some institutions had adequate and appropriate policies and practices pertinent to the institution's relationships with outside entities, including conflicts of interest. Current interest in this issue, and the likelihood that such interest will continue for the foreseeable future, suggests that all higher education institutions—small and large, public and independent, two-year and four-year—may benefit from review of institutional policies and practices in this area.

Although the term “conflict of interest” eludes easy definition, conflicts of interest may typically arise when an institutional decision maker, or the institution itself, has a significant financial or other interest in the decision. Such interests may, for example, take the form of stock ownership in or a consulting relationship with a company that does or seeks to do business with the institution. While certain categories of outside interests may be prohibited by law, or law may require that they be disclosed and/or managed in a particular way, often conflicts management is not primarily a question of law but of ethics and removal of the potential for or appearance of bias.

Generally, transparency is a key to addressing such situations. In light of state-by-state and other variations in pertinent law, and the diversity of types of higher education institutions and differences in culture and missions, the working group does not recommend a comprehensive one-size-fits-all approach. Rather, the working paper seeks to provide guidance to institutions, by (1) proposing five basic precepts and (2) identifying questions and criteria to guide institutional review of policies and of particular situations that may raise ethical concerns. Appended to the working paper is a list of resources on this topic to which institutions may refer.

Basic precepts. The working paper reaffirms that each institution should address ethical institutional practices in a manner consistent with its own sound judgment, values, mission, and experience. The paper (pages 4-5) identifies certain basic precepts (beyond the fundamental requirements that employees and trustees comply with law and put the interests of the institution before their own conflicting interests) that are universal or nearly universal among higher education institutions. These precepts can form a baseline for management of conflict of interest. Absent unusual circumstances, which the working group believes should be exceedingly rare:

1. At every higher education institution, conflicts of interest of trustees, faculty, administrators and staff should be addressed in written policy, whether in one policy or separate policies.
2. The policies should require, at a minimum:
 - disclosure of known significant financial interests a faculty member, administrator or trustee has in outside organizations that do or seek to do business with, or may otherwise benefit financially from association with, the institution, where the individual has actual or apparent influence over an institutional decision that may affect the organization;
 - review of disclosures by one or more institutional officials; and
 - procedures to address identified conflicts.
3. Trustees, faculty, administrators and staff should be notified of the requirements of pertinent policy at least annually.
4. One or more persons at the institution should be available to answer questions about the policies.
5. The institution should review and assess its policies and practices in this area from time to time.

Considerations to guide institutional review. In addition, the working paper identifies several sets of illustrative questions and considerations to help guide institutional review and implementation of conflict of interest policies. The questions and considerations are organized in four categories:

- ***Relationships with vendors and prospective vendors.*** In general, institutions should give close scrutiny to financial relationships between a business and an institutional employee who is in a position to influence an institutional decision that may affect the business, such as selecting a vendor or negotiating a contract. The working paper (page 5) identifies illustrative questions and considerations to help institutions review financial relationships between employees and vendors to the institution. For example, under what circumstances, if any, is it appropriate for an administrator, faculty member, or trustee to (a) accept gifts from, (b) accept paid travel from, (c) accept honoraria or consulting income from, or (d) own stock or have another financial interest in a vendor or prospective vendor to the institution?
- ***Conflict of interest policy.*** The working paper (pages 5-6) identifies illustrative questions to help institutions review a range of aspects of their conflict of interest policy. The questions address such issues as, for example: Whom should the policy cover? Should standards and procedures be different for different categories of persons (such as faculty, administrators, staff and trustees)? How much discretion should employees have in deciding what to disclose? How should financial interests of family members be treated? Should a person with a conflict of interest be permitted to participate in discussion of an institutional decision in which the person has an interest?
- ***Implementation of conflict of interest policy.*** The working paper (pages 6-7) identifies illustrative questions for institutions to ask themselves regarding such areas as the resources devoted to policy compliance; notice and training; oversight; review of disclosures; and conflicts management. For example: Are sufficient resources committed and sufficient systems in place to ensure that required disclosures are made and that they are reviewed by appropriate institutional persons and offices? Which institutional representatives should be responsible for or involved in review, identification, and management of conflicts and which should exercise oversight? Is there sufficient notice and training?

- *Institutional conflicts of interest.* The working paper (pages 7-8) analyzes considerations applicable to institutional conflicts. Careful scrutiny is often called for when the institution has a financial interest in a company that sponsors research at the institution; or when commercial arrangements include collateral benefits to the institution that may affect or appear to affect institutional decisions about goods or services students receive, or that may have unwarranted influence on academic decisions.

The authors hope the working paper will prompt review and comment and advance a conversation in the higher education community about ethical institutional practices and appropriate ways to address conflicts of interest. The paper may be updated and revised from time to time following input from interested parties.

January 18, 2008

Members of the Working Group:

- Stephen S. Dunham, vice president and general counsel, Johns Hopkins University
- Sean A. Fanelli, president, Nassau Community College and American Association of Community Colleges (AACC) Board member
- William E. (Brit) Kirwan, chancellor and CEO, University of Maryland System
- John Lippincott, president, Council for Advancement and Support of Education (CASE) and American Council on Education (ACE) Board member
- Patricia A. McGuire, president, Trinity (Washington) University (DC)
- Ada Meloy, general counsel, ACE (Chair)
- John D. Walda, president, National Association of College and University Business Officer (NACUBO)
- Nancy L. Zimpher, president, University of Cincinnati; chair, National Association of State Universities and Land Grant Colleges (NASULGC) Board of Directors; and ACE Board member
- Staff for the Group: Alex Dreier, Hogan & Hartson, and Terry Hartle, ACE