

POLICY ON FINANCIAL CONFLICT OF INTEREST

Relationships between universities and all levels of government, nonprofit, and business sectors have increased greatly over the past several decades. The College encourages its faculty, administrative, and professional staff members to engage in mutually beneficial relationships with external entities in the public and private sectors. At the same time, the College must guard against either actual or perceived abuses of these relationships.

As professionals, those engaged in relationships with external entities bear responsibility to ensure that their conduct does not create any actual or perceived conflicts of interest, fully disclosing all information pertinent about such relationships.

The College's policy on outside and overload employment is designed to ensure that such relationships do not interfere with the obligations of staff members to the College. This related policy is designed to ensure that such relationships also do not create financial conflicts of interest.

The following policy statement is divided into three sections. The first section provides necessary background information on this financial conflict of interest policy and the need for such a policy. The second section specifies the proposed formal policy and its requirements for financial disclosure and conflict resolution. The third section specifies the formal mechanism for institutional review of financial disclosures and conflict resolution statements. The financial disclosure and conflict resolution form that will be used is appended at the end of the policy statement. The policy was approved by the Board of Visitors 13 May 1995 and becomes effective 1 July 1995.

Background to the Policy

Relationships between the College and government, nonprofit, and business sectors may involve the College in formal grants or contracts with external entities.¹ They may involve individual staff members (primarily faculty) in their responsibilities as College employees. They may involve undergraduate and graduate students of the College. They may involve use of material resources and facilities of the College. Finally, these relationships may involve individual staff members and/or members of their immediate families in direct, contractual links with external entities.

It is impossible to specify all of the possible direct or indirect links between the College and business enterprises that could create a financial conflict of interest for an individual staff member. However, the present policy has been designed to address three hypothetical situations as those most likely to have that potential:

1. **The College seeks a research grant or contract from a government agency or non-profit organization. Should the grant or contract be awarded, a staff member of the College would have both a formal responsibility for completing the research and a significant personal or family financial interest in a business enterprise that might**

For purposes of this policy, research grants and research contracts will be treated as one and the same; with the College as the entity responsible for administering the research; and individual employees of the College responsible for the design, conduct, and/or reporting of the research (e.g., principal or co-principal investigators, research assistants, other research collaborators):

benefit from the substance of the research.

This hypothetical situation potentially relates to the majority of current extramural research at the College. Such research includes grants and contracts from federal agencies (e.g., the National Science Foundation, National Aeronautical and Space Administration, Department of Commerce), and to a lesser extent state agencies (e.g., Virginia Department of Education, Virginia Marine Resources Commission) and selective nonprofit organizations (e.g., private foundations). Federal guidelines from the National Science Foundation (NSF) indicate that grantee institutions with more than fifty employees must establish written and enforced policies on financial conflict of interest. Such institutions must maintain records until at least three years after the completion of an award; and institutional representatives and investigators must provide certifications to NSF with each grant proposal. Effective June 28, 1995, institutional policies must:

- **Require financial disclosure from all investigators applying for NSF grants, if appropriate.**
- **Designate persons to review disclosures, determine whether conflicts exist, and impose conditions or restrictions, if appropriate.**
- **Establish enforcement mechanisms and impose sanctions, if appropriate.**

This financial conflict of interest policy and institutional review and enforcement procedure have been designed to comply with the NSF's investigator financial disclosure guidelines. The policy will be applied to those applying for NSF grants, and also to those applying for grants and contracts from any other government agency, or nongovernmental entity or person. It is the responsibility of staff members who are investigators on any grant or contract to be familiar with and comply with any and all conditions as they may be specified in the policy, and to ensure that any grant or contract application has been duly authorized by the College before it is submitted.

2. **The College seeks a research contract from a business enterprise. Should the contract be awarded a staff member of the College would have both a formal responsibility for completing the research and a significant personal or family financial interest in either the contracting or some other business enterprise that might benefit from the substance of the research.**

This hypothetical situation potentially relates to the current minority of the extramural research at the College. However, this kind of research activity is likely to increase in the years ahead with the development of the College's research and graduate programs. This possibility presently is addressed by the Virginia conflict of interest law.² In this circumstance, the Code defines significant financial interest

² Section 2.1-639.6 (7) of Virginia's State and Local Government Conflict of Interest Act specifies that an employee's personal interest in a research and development contract between the College and a business in which the employee has a personal interest is permissible if (1) the personal interest is disclosed and approved by the institution prior to the time the contract has been entered into, and (2) the employee promptly files a disclosure statement pursuant to Section 2.1-639.15 and annually thereafter by January 15th, and (3) the College's policy regarding such contracts has been approved by the State Council of Higher Education. The foregoing also applies to

in a manner that is generally consistent with federal guidelines;³ it calls for the same financial disclosure from investigators; and it requires the same kind of institutional review and resolution mechanism. Accordingly, the present policy has been designed to meet both the impending federal requirements and the existing requirements of the Virginia Code.⁴

3. **An individual staff member of the College is in an academic evaluative relationship with an undergraduate or graduate student of the College, and wants to involve that student in his or her own outside and overload employment,⁵ including the research or consultant services of a business enterprise in which the staff member has a significant personal or family financial interest.**

The final hypothetical situation is expected to be a fairly rare circumstance, but one that could occur. At issue here is the possible impact of outside and overload employment of faculty, administrative, or professional staff members on the ongoing educational functioning of the College. The major concern here is the potential exploitation of graduate or undergraduate students of the College doing research under the supervision of faculty, administrative, or professional staff members. If a staff member engages students in his or her outside and overload employment, the students could be assigned research work that benefits the staff member financially, as opposed to research work that would be of greater educational value to the students. While the arrangement might be mutually agreeable to the staff member and students, the need for institutional oversight is clear. That is accomplished by this and the related policy on outside and overload employment.

circumstances where a member of the immediate family of the employee has a personal interest in the contract. Immediate family is presently defined in the Act as a spouse or any other person residing in the same household as the employee who is a dependent of the employee, or vice versa.

- ³ The current NSF (federal) guidelines use a floor of five percent of ownership, equity, or intellectual property rights; or \$5000 annually in salary or other payments for services. Among other criteria, the current Virginia Code uses a floor of three percent of ownership, equity, or intellectual property rights; or \$10000 annually in salary or other payments or benefits. For purposes of this policy, a significant personal or family financial interest will be defined as more than three percent of ownership, equity, or intellectual property rights in a business enterprise, or income, other compensation, or benefits that exceed or may reasonably be expected to exceed, \$5000 annually, when aggregated for the staff member, his or her spouse, and any other person residing in the household who is a dependent of the staff member (or vice versa).
- ⁴ It is possible that a research project could be funded by the federal government and a business enterprise that has a commercial interest in the research. While the College's policy applies on both counts, the federal government may impose additional restrictions in this special circumstance. The Virginia State and Local Conflict of Interest Act will also apply.
- ⁵ See the College's related policy on Outside and Overload Employment. The policy covers any outside employment or other paid activity (e.g., consulting, teaching, research which is outside the normal scope of employment, training, or service) that is undertaken by members of the instructional, administrative, and professional staffs.

All of the three hypothetical situations discussed above suggest the need for (1) financial disclosure by individual College employees and (2) an institutional review and resolution mechanism. The following formal policy and procedure to implement that policy meet those requirements.

The Formal Policy

This policy applies to any faculty, administrative, or professional staff member of the College who is an investigator (principal or co-principal investigator, research assistant, other research collaborator) on any proposed or funded research grant or contract to or involving the College. The policy applies also to any staff member who wants to involve undergraduate or graduate students in his or her proposed outside and overload employment. In either case, the staff member must review this policy statement and determine if he or she may have a financial conflict of interest, as that is defined below.

A potential conflict of interest exists whenever a faculty, administrative, or professional staff member has a significant personal (or family) financial interest in a business enterprise that could bias the design, conduct, or reporting of research or educational activities of the College. A financial interest is defined as anything of monetary value or benefit (other than salary paid by the College), including ownership, equity, intellectual property rights, and salary or other compensation. A significant personal or family financial interest is defined as more than three percent of ownership, equity, or intellectual property rights in a business enterprise, or income, other compensation, or benefits that exceed, or may reasonably be expected to exceed, \$5000 annually, when aggregated for the staff member, his or her spouse, and any other person residing in the household who is a dependent of the staff member (or vice versa).

In the case of a research grant or contract, a policy issue will arise whenever a staff member has both a responsibility for completing the research and a significant personal (or family) interest that might benefit from the research. If a potential conflict of interest exists, the staff member must disclose that potential on the College's internal Proposal Transmittal Form at the time of proposal submission; or if the staff member becomes involved in the project after the grant or contract has been awarded, in an amendment to the Proposal Transmittal Form before that involvement has commenced. The relevant question to be answered is #3 in the section on "Special Requirements" of the Proposal Transmittal Form:

- **Please review the College's policy on Financial Conflict of Interest. Does the research raise any concern in relation to the College's policy? ___ no ___ yes (complete and attach the College's Financial Disclosure and Conflict Resolution Form)**

If the staff member answers "yes" to the above question, he or she must complete a disclosure of any personal (or family) financial interest relevant to the project and a written statement specifying how any concern about a conflict of interest will be resolved. The financial disclosure and resolution statement will then be subject to the institutional review specified below, and the funding entity will be informed of the College's decision. If a staff member who has submitted and received approval of a Financial Disclosure and Conflict Resolution Form, realizes that his or her personal or family financial circumstances have changed such that they now exceed one of the floors defined in this policy, he or she must promptly submit a new form for approval.

In the case of outside and overload employment, a policy issue will arise whenever a staff member who is in an academic evaluative relationship with an undergraduate or graduate student of the

College wants to involve that student in the activity, including the research or consulting services of a business in which a staff member has a significant personal (or family) financial interest. The concern here is the potential or perceived exploitation of students by staff members for financial gain. Specifically, students could be assigned research work that benefits the staff member financially, as opposed to research work that would be of greater educational value to the students.

Prior approval must be sought in advance of the beginning date of outside and overload employment. Any possible financial conflict of interest identified by a staff member seeking such approval must be noted on the College's Outside and Overload Employment Approval Form. The relevant question on the form is as follows:

- **Will undergraduate or graduate students be involved in the activity?**

no

yes (attach statement giving full details of student involvement in the outside and overload employment)

Also review the College's policy on Financial Conflict of Interest as it relates to the involvement of undergraduate or graduate students in outside and overload employment of faculty, administrative, or professional staff members. Does the activity raise any concern in relation to the policy? no yes (complete and attach the College's Financial Disclosure and Conflict Resolution Form)

If the staff member answers "yes" to the above question, he or she must first describe what students will be doing. The staff member must then review the College's policy on Financial Conflict of Interest, and, if any significant personal (or family) financial interest is identified, disclose the relevant circumstances and a written statement specifying how any concerns about a conflict of interest will be resolved. The financial disclosure and resolution statement will then be subject to the institutional review specified below.

The conditions or restrictions that might be implemented to resolve a financial conflict of interest include but are not limited to the following:

- **Public disclosure of the financial interest.**
- **Monitoring of the extramural research or outside and overload employment by independent reviewers.**
- **Modification of the extramural research or outside and overload employment.**
- **Disqualification from participation in all or a portion of the extramural research or outside and overload employment.**
- **Delegation of significant personal or family financial interest to trust.**
- **Divestiture of financial interests or severance of relationship that creates the financial conflict.**

Institutional Review and Resolution of Financial Disclosure and Conflict Resolution Statements

Questions about possible financial conflicts of interest should be discussed by staff members with their immediate supervisors before internal Proposal Transmittal Forms are submitted or amended, or before Outside and Overload Employment Approval Forms are submitted. However, supervisors have no authority to modify or waive any of the provisions in this policy, the final interpretation of which lies with the President or his or her designee. Copies of this Financial Conflict of Interest Policy and the Financial Disclosure and Conflict Resolution Form are available in the Provost's Office.

Before financial disclosure and conflict resolution forms are sent to the Provost's Office for approval, faculty members must seek endorsement signatures from the department chair (where relevant) and the appropriate dean; and administrative and professional staff members must seek endorsement signatures from the relevant administrative officer. Copies of approved financial disclosure and conflict resolution forms are sent to the staff member and those who have endorsed the form. The College will maintain records of all financial disclosures and all actions taken to resolve actual or potential conflicts of interest for three years after the termination or completion of a research grant/contract, or outside and overload employment.

If approval of a Financial Disclosure and Conflict Resolution Statement is denied by the staff member's immediate supervisor, that action may be appealed to the next highest administrative level and ultimately to the Provost. When relevant, procedures from the Faculty Handbook may be applied.

Nothing in this policy is intended to modify or circumvent any provision of Virginia's the State and Local Government Conflict of Interest Act. All College employees are expected to comply with the Act. In particular, staff members should be cognizant of the potential conflicts emanating from personal interest in contracts with the College (other than their regular employment), other agencies of the Commonwealth, and local government. Such conflicts may also exist when the staff member's spouse or other member of the immediate family has a personal financial interest in the contract or transaction. No approval provided under this policy will relieve any employee of the College of his or her obligations under Virginia law (see Virginia code 2.1-639.1 et. seq.). Similarly, employees are responsible for complying with all grant/contract restrictions and conditions, and prevailing policies.

This policy may be amended by the College's Board of Visitors. Amendments will be applied prospectively unless required by law.

Approved by the Board of Visitors
13 May 1995

**FINANCIAL DISCLOSURE AND CONFLICT
RESOLUTION FORM**

Please complete the following financial disclosure and resolution statement if you have identified a possible conflict of interest on the College's Proposal Transmittal Form for grants and contracts, or on the College's Outside and Overload Employment Approval Form.

**Part I: Financial Interest Relevant to Research Grant/Contract or
Outside and Overload Employment**

Please identify each business enterprise in which you have a significant personal (or family) financial interest that might benefit economically from your research or external paid employment. A significant personal financial interest is defined as more than three percent of ownership, equity or intellectual property rights in a business enterprise, or income, other compensation, or benefits that exceed, or may reasonably be expected to exceed, \$5000, when aggregated for yourself, your spouse, and any other person residing in your household who is your dependent (or vice versa).

Name of Business

Financial Interest

1.

2.

3.

4.

5.

Part II: Statement of Conflict Resolution

In the space provided, please provide a full disclosure of each potential conflict of interest related to your research grant/contract or outside and overload employment, and how you propose to resolve that conflict prior to initiating the work (use back of page as necessary).

I certify that, to the best of my knowledge, the financial disclosure in Part I is correct and that the identified conflict of interest(s) will be resolved in the manner I have proposed in Part II. I certify also that I will promptly update the above financial disclosure and conflict resolution statement for the signatories below if the circumstance of my financial interest(s) changes during the period of the research grant/contract or outside and overload employment. I understand that the College reserves the right to withdraw its approval at any time as circumstances may change.

Signature

Date

Approval

Department Chair (as appropriate)

Date

Dean or Administrative Supervisor

Date

Provost

Date

May 1995

**OUTSIDE AND OVERLOAD EMPLOYMENT
APPROVAL FORM**

I hereby request approval to undertake the task described below, which constitutes outside and overload employment within the definition of that term in the Faculty Handbook. Such authorization is required under contract provisions which state that any additional employment beyond the regular duties at the College of William and Mary must be reviewed and approved at least annually by the President or his designee.

DESCRIPTION OF EMPLOYMENT (Nature of the task; duration; estimated time required; level of remuneration; etc.)

Will undergraduate or graduate students be involved in the activity?

no

yes (attachment statement giving full details of student involvement in the outside and overload employment)

Also review the College's policy on Financial Conflict of Interest as it relates to the involvement of undergraduate or graduate students in outside and overload employment of faculty, administrative, or professional staff members. Does the activity raise any concern in relation to the policy? no yes (complete and attach the College's Financial Disclosure and Conflict Resolution Form).

In making the request, I certify that this additional commitment will not impair my primary obligation at the College to teaching and research, or to assigned administrative duties. I certify also that in my judgment the work to be undertaken is professionally appropriate and not subject to accusation of conflict of interest.

Signature

Date

Approval

Department Chair (as appropriate)

Date

Dean or Administrative Supervisor

Date

Provost

Date

Revised 1 July 1995