

NOTICE OF PROPOSED REGULATION

Date: February 14, 2017

REGULATION TITLE:
University of Florida Ethics Policy

REGULATION NO.:
UF-1.0104

SUMMARY:

The University of Florida Ethics Policy, originally adopted by the Board of Trustees in 2004, has been updated to provide more in-depth guidance on requirements for Trustees and employees to fulfill their longstanding requirement to conduct their UF activities to highest ethical standards and business practices.

This includes complying with existing UF regulation 1.011 and the Code of Conduct for Public Officers and Employees under state law, Section 112.313, Florida Statutes. The updated policy codifies longstanding practices and roles of the University's Ethics Advisor, who is the General Counsel, and those who approve outside activities, and Trustees and employees.

It raises awareness of actual, likely potential, and the appearance of conflicts of interest because avoiding these is important to fulfilling the longstanding policy of highest ethical and business practices. The updated Policy notes that some conflicts, if identified, disclosed and managed according to UF policies and regulations and applicable law, are permitted in the interests of UF.

The updated Policy provides detailed guidance codifying the processes for advice and decision-making on actual, potential and appearance of conflicts. Trustees and senior officers are to consult with the Ethics Advisor when questions or issues arise.

Deans and employees who are not senior officers are to notify the authority who approves their outside activities and that approving authority seeks guidance from the Ethics Advisor if there are questions. Codifying current practice, it is presumed the advice of the Ethics Advisor should be followed to comply with the Policy, but a final decision may be requested of the Chair of the Governance Committee for Trustees and the President; the President for senior officers; and the highest ranking relevant Vice President and the President or designee for deans and employees who aren't senior officers. The updated policy also provides detailed guidance on recusal.

AUTHORITY: BOG Regulation 1.001

COMMENTS CONCERNING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: Sandy Mitchell, Legal Assistant II, 123 Tigert Hall, PO Box 113125, University of Florida, Gainesville, FL 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION: Jamie Lewis Keith, Vice President, General Counsel and University Secretary.

THE FULL TEXT OF THE PROPOSED REGULATION IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

1.0104 University of Florida Ethics Policy

University of Florida Ethics Policy

The University of Florida Board of Trustees has established the following Ethics Policy for the University of Florida:

All Trustees, senior officers,¹ deans, and employees of the University of Florida will adhere to the highest ethical and business practices. All actions of the Trustees, senior officers, deans, and employees of the University shall be in compliance with the law, including the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, and University of Florida Regulations, Guidelines, Policies and Procedures on Outside Activities (including, but not limited to, UF Regulation 1.011 and this Policy) or governing conflicts of interest² (“policies”).

The Ethics Advisor for the University of Florida is the Vice President and General Counsel, 123 Tigert Hall, Post Office Box 113125, Gainesville, Florida 32611, 352-392-1358. The Ethics Advisor may engage assistance of an outside expert or other resource for the University.

With exceptions where an authorized, identified and managed conflict is in the University’s interests, Trustees, senior officers, deans and employees must avoid actual and reasonably likely conflicts of interest, as well as the appearance of conflicts of interest, as these are inconsistent with the highest ethical and business practices.

Conflicts that are both permitted by law and permitted under this Policy or other University policies, or are permitted by law and a University collective bargaining agreement, are in the interests of the University and do not violate this Policy.³ This Policy does not amend other University policies and procedures for reviewing, approving, managing and monitoring permitted conflicts.

The Trustees, senior officers and deans of the University will affirm in writing on an annual basis their knowledge of and commitment to this Ethics Policy. That is generally done by signing the University’s Disclosure of Outside Activities and Financial Interests Form in the case of senior officers and deans or by signing the Trustee Disclosure Form Re: Ethics Law and UF Ethics Policies in the case of Trustees.

¹ **Senior officers** are the President, Vice Presidents, and presidential cabinet members.

² **Conflict of interest** means any action, employment or other position, relationship or interest that is prohibited, or is defined as a conflict, potential conflict, or appearance of conflict, by applicable law or policies. A conflict of interest includes, without limitation, any conflict, between the private (non-university) interests of a Trustee, senior officer, Dean, or employee and the public interests of the University of Florida or the State of Florida. A conflict of interest need not reflect an adversarial situation. A conflict may arise in a collaborative effort, positive relationship or transaction with another entity or individual where there are many common interests, but where each party also has its own interests.

³ **Permitted conflicts** include, for example, identified, approved, managed and monitored conflicts that may arise in licensing University technology for commercialization or that may arise in research agreements and which are handled in accordance with applicable University policy and law.

Ethics Policy Implementation

A. Policy Interpretation and Decision-making

When a potential or actual conflict or an appearance of conflict of interest arises, or a question about the meaning or implementation of the University's Ethics Policy arises, the following processes apply to appropriately address the issue. The standards for Trustees and all University employees are the same; the procedure differs for Trustees, senior officers, deans, and employees who are not senior officers or deans.

1. Advice on Interpreting this Policy: *For Trustees and senior officers:* Where a likely potential conflict, an actual conflict, or a conflict appearance issue arises, a Trustee or senior officer shall consult with the University's Ethics Advisor for guidance and take prompt steps to avoid or correct the appearance or an actual issue as required by law and University policies.

For deans and employees who are not senior officers or deans: Where any such potential or actual conflict or appearance issue arises for a dean or an employee who is not a senior officer or dean, the dean or employee shall promptly notify the authority who approves his or her outside activities under University Regulation 1.011 and associated procedure, and shall take prompt steps to avoid or correct the appearance or actual issue as required by that authority, law and University policies. That approving authority shall confer with the relevant dean or vice president, and, if a question remains, the Ethics Advisor, for guidance in any situation where there is a question about the application of this Policy, other policies, or law or the appropriate action to avoid or correct the matter.

2. Decision on Requirements of This Policy: When the Ethics Advisor advises recusal from any role or action, or advises other action or refrain, to avoid an actual, likely potential, or apparent conflict of interest, it is presumed that such recusal or other action or refrain is required to comply with this Policy.

This presumption may be overcome:

- (a) in connection with a Trustee or the President, by a determination of the Chair of the Board's Committee on Governance acting in an executive capacity in consultation with the President (if not conflicted), as the final decision-maker for the University;
- (b) in connection with another senior officer, by a determination of the President or his or her non-conflicted senior officer designee, as the final decision-maker for the University; and
- (c) in connection a dean or an employee who is not a senior officer or dean, by a determination of the relevant highest ranking vice president and the President or senior officer designee, as the final decision-makers for the University.

While not required and not necessarily covering all law and policies applicable to a situation, if an opinion of the Florida Commission on Ethics is sought and received, with full and accurate disclosure of relevant facts, the Commission's interpretation of the Code of Ethics for Public Officers and Employees shall govern the application of that law to the situation.

B. Recusal Requirements

When recusal is required to comply with this Policy, the following recusal requirements apply.

For clarity, when it applies, recusal means:

(1) not having any role on behalf of the University and/or the other entity or individual involved (direct, indirect, in front of or behind the scenes) in addressing a specific matter in which the University and the other entity or individual has, is expected to have, or is targeted to have any interest or involvement; and

(2) not in any manner influencing or seeking to influence such specific matter.

Addressing the specific matter means participating in substantive discussions of, and/or being involved or having a role in initiating, planning, assessing, negotiating, decision-making on, overseeing, advising on, pursuing, carrying out, implementing, altering, ending, or having any other substantive involvement in, a specific employment or business relationship, specific contract, or a specific business objective in which there is a conflict, likely potential conflict or appearance of conflict between the University and another entity or individual.

Recusal is not intended to cover social functions unrelated to the specific employment or business relationship, the specific contract, or the specific business objective, and is not intended to cover public events and announcements about such matter. However, the recused individual must not participate in discussion or presentation of the matter or have a role on behalf of the University and/or the other entity or individual in addressing the matter. Recusal also is not intended to cover the mere introduction of representatives of the University and another entity or individual (without discussing any specific employment or business relationship, specific contract, or specific business objective) or the provision of names and contact information of representatives of the University or the other entity or individual to the other. This is not intended to be an exhaustive list of exclusions. Advice is available from the Ethics Advisor.

Recusal must be documented and the fact of recusal must be appropriately noticed within the University and the other entity or individual. This is generally done at the University through the outside activities disclosure and approval process documentation.

C. Periodic Review

The Board of Trustees Committee on Governance shall review this Policy every five years and present any recommended update to the full Board for its action.

Authority: BOG Regulation 1.001

History—New __-__-17.