

 UNIVERSITY of DENVER	UNIVERSITY OF DENVER POLICY MANUAL CONFLICTS OF INTEREST	
<u>Responsible Department:</u> Office of Internal Audit <u>Recommended By:</u> VC Legal Affairs and General Counsel and SVC Business and Financial Affairs <u>Approved By:</u> Board of Trustees	<u>Policy Number</u> AUDT 3.20.060	<u>Effective Date</u> 6/28/2021

I. INTRODUCTION

The University of Denver expects the highest standards of conduct and honesty from all of its University Representatives. University Representatives must fulfill their institutional responsibilities with care and loyalty and must avoid involvement in activities that conflict with, or appear to conflict with, those responsibilities. The term “University Representatives” includes trustees, officers, faculty members, and employees of the University of Denver.

II. POLICY OVERVIEW

A. General Rule

University Representatives should use good judgment and professional commitment to protect themselves and the University from conflicts of interest. This includes avoiding situations or activities that could interfere with a University Representative’s unfettered exercise of judgment in the best interests of the University. University Representatives should make decisions and take actions on behalf of the University for the sole purpose of advancing the best interests of the University. While the University encourages participation in professional, community service, and other external activities, University Representatives must avoid ethical, legal, and financial conflicts of interest arising out of those activities that may compromise their effectiveness in carrying out their University responsibilities.¹

B. Conflict of Interest Defined

¹ See also University Policy Number 3.20.070 - *Code of Business Conduct*, Section G, page 3 of 5: “University Personnel are responsible for performing their duties in good faith and in the best interests of the University. University Personnel should be sensitive to situations that could raise questions of potential or apparent conflicts between personal interests and the University’s interests. Generally, a conflict of interest exists when an individual acting on behalf of the University obtains improper personal gain for themselves or for another party, or when a particular action has an adverse effect on the University’s interests.”

A conflict of interest exists in situations when a University Representative has a significant financial, personal, or professional interest that is directly or indirectly at odds, or inconsistent with the University's interests. It is not possible to define all situations that might be considered conflicts of interest, and ultimately, the University relies on each University Representative's sound judgment and common sense. The most likely conflict situation is one in which a University Representative has a financial interest, direct or indirect, in the business dealings of the University. Conflicts of interest occur in situations such as when:

1. An individual's ability to act independently or objectively in the University's best interests may be impaired, or might appear to be impaired,² by an existing or potential financial, personal, or professional benefit received by the individual;
2. An individual has a significant financial interest³ in another entity that supplies, or proposes to supply in the future, funds, goods, or services to the University;
3. An individual has a relationship with a third party, such as a vendor of goods or services to the University, that results in, or has the potential to result in, personal gain to the individual because of the third party's relationship with the University; or
4. An individual derives, or appears to derive, a financial or other material benefit from confidential information learned in the course of work or service on behalf of the University.

University Representatives' individual interests include the interests of their family members, who are defined as a University Representative's spouse, domestic partner, and dependent children.

C. Conflicts of Interest and Gifts

The potential exists for a conflict of interest, or the appearance of a conflict of interest, when a University Representative accepts a gift from a third party in conjunction with the third party's work on behalf of the University or the third party's interest in developing a relationship with the University. University Representatives may accept ordinary courtesies of business from a third party -- such as gifts of nominal value (including meals and entertainment) incidental to a business relationship -- but University Representatives should not accept frequent gifts from the same third party.

² This policy also addresses situations involving apparent conflicts of interest. An apparent conflict exists when a reasonable person would conclude from the circumstances that a University Representative's ability to discharge his or her duties are compromised by personal interest.

³ A significant interest in another entity includes (a) service as a trustee, director, partner, or management-level employee of the entity and/or (b) the actual or beneficial ownership of more than 35% of the entity.

University Representatives are responsible for using good judgment to avoid even the appearance that acceptance of a gift could result in favorable treatment or obligate the University in any way. When determining whether it is appropriate to accept a gift, University Representatives should ask themselves whether the gift is reasonable in value or type and how accepting such a gift may appear to others. Because of the potential appearance of a conflict of interest, University Representatives responsible for handling or managing procurement functions should never accept gifts of any kind from third parties involved in any University business activities. A University Representative should never accept a cash gift or request a gift of any kind from a third party working on behalf of the University or a third party interested in developing a business relationship with the University.⁴

III. PROCESS OVERVIEW

A. Prompt Disclosure Required

When a University Representative, other than a trustee or the Chancellor, becomes aware of an interest or relationship that might constitute or give rise to a conflict of interest, the University Representative must promptly disclose that individual interest to his or her supervisor and the Office of Internal Audit. Trustees and the Chancellor must make prompt disclosures to the Chair of the Audit Committee. A University Representative must also promptly disclose a significant personal, financial, or other interest in any transaction for which he or she is being called upon to exercise his or her University authority. The University Representative must follow up on any verbal disclosures with a written disclosure using the Conflict of Interest Disclosure Form maintained by the Office of Internal Audit.

Failure of a University Representative to disclose an actual or potential conflict of interest and any participation in a transaction related to a conflict of interest may result in disciplinary action for the University Representative, up to and including termination.

B. Recuse and Refrain

The general rule of “recuse and refrain” applies when dealing with conflict of interest situations. A University Representative must not participate in University decision-making regarding a transaction in which the University Representative is potentially personally interested, unless the applicable decision-maker identified in Section VII below determines that an actual

⁴ Two other University policies contain prohibitions on employees receiving or requesting gifts and gratuities. See University Policy Number 2.30.014 - Gifts and Gratuities Policy (Section 2 and Item 1) and University Policy Number 2.30.016 - Supplier Code of Conduct (Item 10).

conflict of interest is not present. Recusal in this manner is the typical approach for addressing potential or actual conflicts of interest that are identified before the University Representative actually participates in a transaction.

Recusal bars the University Representative from any participation in the matter that relates to the University Representative's financial or personal interest, and the University Representative must promptly inform others involved in the transaction of the recusal. Recusal specifically requires that the University Representative exclude himself or herself from participating in any discussions (whether orally or in writing) or votes on the matter.

C. Evaluation of Conflict of Interest Concerns

For all University Representatives except trustees, the Vice Chancellor of Legal Affairs & General Counsel and the Director of Internal Audit will confer to determine whether a reported concern amounts to an actual or apparent conflict of interest. The Vice Chancellor of Legal Affairs & General Counsel and the Director of Internal Audit have the discretion to review and discuss, as needed, conflict of interest concerns with the Senior Vice Chancellor of Business and Financial Affairs and/or the Director of Enterprise Risk Management.

For trustees, the Chair of the Audit Committee determines whether a reported concern amounts to an actual or apparent conflict of interest. The Chair of the Board of Trustees must make the determination if the conflict of interest concern involves the Audit Committee Chair. The person making the determination has the discretion to review and discuss, as needed, conflict of interest concerns with the full Audit Committee, the Chair of the Board of Trustees, the Chair of the Nominating & Governance Committee, and/or the Vice Chancellor of Legal Affairs & General Counsel.

D. Annual Questionnaire and Reporting Process

Each fiscal year, the University's Director of Internal Audit will forward to the following University Representatives a Conflict of Interest Questionnaire concerning the preceding fiscal year, along with a copy of the University's Conflict of Interest Policy:

- Trustees;
- Chancellor;
- Provost & Executive Vice Chancellor;
- Senior Vice Chancellors, Vice Chancellors, Deans, Officers, and the equivalent;
- Directors (Director 1, 2, and 3 HR Position Titles);

- Academic Department Chairs;
- Head coaches and assistant coaches of University athletics programs; and
- All persons not appearing on the above list who are required to complete an Annual Sub-Certification Disclosure by the University's Corporate Governance and Responsibility Policy (Policy Number 2.10.070).

University Representatives receiving the questionnaire have a responsibility to answer questions thoroughly and to the best of their abilities. If a University Representative becomes aware of a material change in circumstances concerning a previously-submitted disclosure, the University Representative must promptly provide amended information to the Office of Internal Audit, using the Conflict of Interest Disclosure Form available on the Office of Internal Audit's University website.⁵ The Office of Internal Audit maintains information provided pursuant to this policy in a confidential manner and retains such information for a period of five (5) years.

For all University Representatives, except trustees, the Director of Internal Audit will work with persons who disclose potential or actual conflicts of interest to resolve those conflicts to the fullest extent possible. When all University Representatives have responded to the annual questionnaire, the Director of Internal Audit will report the findings to the immediate supervisor of each person who provided any affirmative response to the questionnaire. The immediate supervisor will have an opportunity to comment on whether any concerns exist that need further attention. If recusal is appropriate in any transaction, the immediate supervisor will also communicate the need for recusal to others involved in the transaction.

For trustees, the Director of Internal Audit will promptly share with the Chair of the Audit Committee any significant disclosures made by trustees during the annual disclosure process. The Chair will work to resolve those conflicts to the fullest extent possible.

At the close of the annual disclosure process, the Director of Internal Audit will present a report on the entire process to the Chair of the Audit Committee. The report will include information about: (a) the number of University Representatives responding to the questionnaire; (b) disclosures made; (c) conflict determinations and remedial action; and (d) conflict concerns arising throughout the previous fiscal year, outside of the annual disclosure process. The Director of Internal Audit will provide the following persons with copies of the report: the Senior Vice

⁵ The Office of Internal Audit is responsible for maintaining and updating the Conflict of Interest Questionnaire and Disclosure forms.

Chancellor for Business and Financial Affairs; the Vice Chancellor of Legal Affairs & General Counsel; the Controller; and the Director of Enterprise Risk Management. The Director of Internal Audit will also present the report to the members of the Audit Committee on an annual basis.

E. Foreign Corrupt Practices Act and Conflict of Interest Rules of Other Organizations.

University Representatives must also comply with the Foreign Corrupt Practices Act (FCPA) and consider the conflict of interest policies of other organizations.

The FCPA is a U.S. federal law that prohibits providing “anything of value” to a foreign government official for the purpose of “securing any improper advantage” in business dealings. Violations of the FCPA contain three elements: (1) a payment or something of value is given, offered, or promised; (2) to a foreign official, political party, party official, or candidate; and (3) for a corrupt purpose. Under the FCPA, a person acts with a corrupt purpose if the activity involves an attempt to improperly influence a foreign official to obtain a business advantage. Many countries also have national and local laws prohibiting bribery that University Representatives must follow when conducting activities in or involving those countries. The FCPA or other anti-bribery laws may cover actions that occur within the United States, in a foreign country, or outside the applicable country’s borders. Items of value that amount to a bribe include both monetary and non-monetary exchanges, such as travel, entertainment, scholarships, or employment opportunities. The FCPA contains no monetary threshold -- any exchange of value for a corrupt purpose may constitute a violation of the FCPA.

While the FCPA does not prohibit payments to facilitate or expedite routine, ministerial government actions, facilitating payments may violate foreign anti-bribery laws. University Representatives should not make facilitating payments unless (i) the payment is necessary to prevent the risk of injury or imminent harm to oneself or another person, or (ii) the University’s Office of General Counsel determines that the payment is legally permissible.

University Representatives should also be familiar with and respect conflict of interest policies of third-party organizations with which the University does business. In particular, the University discourages gift-giving to third-party representatives, and a University Representative should never give or offer a gift to a third-party representative that would violate the third-party organization’s conflict of interest policy.

IV. DEFINITIONS

- 1. "**University Representatives**" - see Section I.
- 2. "**Conflict of Interest**" - see Section II.B.
- 3. "**Family Members**" - see Section II.B.

Revision Effective Date	Purpose
<i>6/28/2021</i>	<i>Minor revisions</i>