

2.0 Administrative Policies and Procedures

2.00.00 Organization Policies

2.05.00 Conflict of Interest Policy

1. GENERAL BACKGROUND

Desert Research Institute employees may be involved in outside organizations in which they may have business interests or in which they are active participants. These activities often encourage the exchange of technological and business expertise from the Institute to the private sector and may have a beneficial influence on the economic growth of the state. The associations derived by employees from appropriate participation in these organizations will, in most cases, have a beneficial influence on their professional, research, and teaching growth. The Institute will operate so that the public trust and the institutional interests will always be protected, and the individual interests are promoted to the maximum extent allowable. Consequently, it is generally in the best interests of the State of Nevada, the Nevada System of Higher Education (NSHE), and the Institute to encourage such associations.

However, it is inevitable in an entrepreneurial environment that potential conflicts of interest will arise. DRI is committed to overseeing business practices in a manner that ensures the integrity of the process and by maintaining public trust in the integrity and credibility of its faculty, staff, and projects. This commitment requires DRI to establish standards that provide a reasonable expectation that research results will not be biased by the external commitments and financial interests of persons who are responsible for the design, conduct, and reporting of sponsored projects; that is, investigators. Sponsored projects, for the purpose of this policy, include all extramurally funded research, education, and public service projects. Every DRI employee has an obligation to become familiar with, and abide by, the provisions of the policy.

Research, hiring decisions, procurement, and all other DRI activities must be free from the undue influence of outside interest. The policy identifies and addresses the real, potential, or apparent conflicts of interest (COI) that may occur when an investigator's private interests (such as outside professional or financial relationships) may compete with their professional obligations to DRI, and defines the requirements of all investigators to ensure that those activities are conducted objectively and without consideration of personal financial gain. The principles and procedures of this policy ensure that employees will report their external commitments and financial interests in a timely manner and that the COI (real and apparent) of any individual will be identified and responsibly managed. This policy complements the Institute's Scientific Integrity and Professional Ethics Policy.

To meet these goals, DRI operates under three guiding principles regarding conflicts of interests. First, all such conflicts (real, potential, or apparent), will be fully disclosed and dealt with openly. Secondly, all employees will be sensitive to, and attempt to avoid, conflicts of interest.

Third, all procedures to deal with specific cases of real or potential conflicts of interest will be mediated by an objective, disinterested third party.

This policy incorporates requirements of federal guidelines, Nevada Revised Statutes (NRS), and Board of Regents (BoR)/Nevada System of Higher Education (NSHE) policies as they relate to financial interests and professional relationships related to research projects. In the event of a conflict between federal guidelines and NRS/BoR/NSHE policies, federal guidelines shall control.

There are three classes of conflicts of interests:

1. *Unacceptable conflicts of interest* – employee makes a decision that is not in the Institute's best interest and has a personal or financial interest in the outcome. Such activities will not be permitted;
2. *Potentially unacceptable conflicts of interest* – employee is in a position to make such a decision and has a personal or financial interest in the outcome. Such situations should be avoided by placing a disinterested third party in the decision-making process; and
3. *Apparent conflicts of interest* -- complete disclosure of all of the facts related to the conflicts of interests will generally be adequate.

This policy is applicable to all Desert Research Institute faculty and staff. There are also provisions in this policy that apply to the employee's spouse and dependent children.

2. LEGAL BACKGROUND

In the various relationships that exist between the Institute and other public or private entities, the potential for conflict of interest can arise. Conflicts of interest are not necessarily unwarranted, unethical, or illegal, nor are they always avoidable. Rather, it may be the failure to disclose conflicts or potential conflicts that is unethical and may be illegal under state and/or federal law. Institute employees must protect the public trust accorded them and are obligated to avoid conflicts of interest where possible.

Although DRI is exempt from Title 23 of the Nevada Revised Statutes, the provisions of the "Nevada Ethics in Government Law" (NRS 281A.020) provides statutory guidance for a DRI Conflict of Interest policy. The law states:

1. *It is hereby declared to be the public policy of this State that:*
 - a. *A public office is a public trust and shall be held for the sole benefit of the people.*
 - b. *A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.*
2. *The legislature finds that:*
 - a. *The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.*

b. To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

The Board of Regents Handbook policy that is most applicable for this policy is Title 4, Codification of Board Policy Statements, Chapter 10, General Business Management; Number 7, entitled "Conflicts of Interest Prohibited." This policy states:

In addition to such conflicts of interest prohibited by law, it shall also be prohibited for a member of the Board of Regents or an employee of the NSHE:

- 1. to become a contractor or a vendor for the purchase of supplies, equipment, services and construction under any contract or purchase order of any kind authorized by the NSHE under the provisions of this chapter, or*
- 2. to be interested, directly or indirectly, through any member of a Regent's or employee's household, as defined by Nevada Revised Statutes 281A.100, or through any business entity in which the Regent or employee has a financial interest, in any kind of contract or purchase order so authorized by the receipt of any commission, profit or compensation of any kind.*

Exceptions to this policy can be granted for certain sole source procurements or by the DRI President when the public interest would best be served by making such an exception.

In addition to State of Nevada regulations, Federal grant regulations require the Institute in its application for Federal funds to certify that it, "Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of the personal or organizational conflicts of interest or personal gain."

3. POLICY

It is the policy of the Institute to permit employees to engage in outside employment, consulting, and other business activities provided that no actual or potential conflict of interest or appearance of such conflict exists, or are managed if conflicts do exist; and such activity does not adversely affect their ability to perform their assigned duties. Employees must avoid any outside activity that could reasonably be expected to adversely affect or to give the appearance of adversely affecting the independence and objectivity of their judgment or interfere with the timely and effective performance of their duties and responsibilities or discredit DRI.

4. DEFINITIONS

Business Entity: Any sole proprietorship, partnership, corporation, or other enterprise used in carrying on a business.

Business Interest: Any degree of ownership (except ownership of widely-held stock in major, publicly-held corporations), employment, or other mutual agreement for monetary gain by the

employee, or any member of the employee's close family (spouse, child, sibling, parent, and relative-in-law).

Conflict Management: The actions that have been, or will be, taken to manage of Conflict of Interest (COI).

Conflict of Interest (COI): May take many forms and exists whenever personal (including those of family members), professional, commercial, or financial interests or activities outside of DRI have the possibility of compromising an individual's judgment; biasing the nature or direction of scholarly research; influencing an individual's behavior with respect to service, appointments and promotions, use of Institute resources, interactions with human subjects, or other matters of public interest to DRI, NSHE, and State of Nevada; resulting in personal gain or advancement.

Conflict of Interest Management Plan: A plan that is designed to afford a reasonable expectation that the design, conduct, and reporting of research, training or service activities will be free from bias or personal gain resulting from an Investigator's COI. Conflict of Interest Management Plans also provide oversight to ensure adherence to the highest scientific and academic standards and protect the interests of other Institute employees or students who may be involved in the sponsored project.

Disclosure: The reporting of financial interests related to the Investigator's Institutional Responsibilities, including Significant Financial Interests (SFI).

Employee: For purposes of this policy, all persons hired by DRI on a full- or part-time basis and all persons in official DRI positions or otherwise appointed to act on behalf of DRI.

Financial Interest: Anything of monetary value received or held by an Investigator or a member of the Investigator's family, whether or not the value is readily ascertainable, including, but not limited to: salary or other payments for services (e.g., consulting fees, honoraria, or paid authorships for other than scholarly works); equity interests (e.g., stocks, stock options, or other ownership interests); and intellectual property rights and interests (e.g., patents, trademarks, service marks, and copyrights), upon receipt of income related to such rights and interests.

Financial interest does NOT include:

- Salary, royalties, or other remuneration received from or through DRI.
- Intellectual property rights assigned to DRI and agreements to share in royalties related to such rights.
- Income from the authorship of academic or scholarly works.
- Income from seminars, lectures, or teaching engagements sponsored by or from advisory committees or review panels for U.S. institutions of higher education, or U.S. research institutes that are affiliated with institutions of higher education.

Institute Official: The individual within DRI, or their designee, that is responsible for the solicitation and review of disclosures, including those of the Investigator's family related to the Investigator's Institute responsibilities; development and oversight of COI Management Plans; and retention of disclosure forms, and related documents.

Institute Responsibilities: Investigators' responsibilities associated with their DRI appointment or position, such as research, service activities, administration, and Institute (internal and external) professional committee service.

Investigator: Any person, regardless of title, position, or employment status who is responsible for the design, conduct, or reporting of research on behalf of, or in collaboration with DRI and having a contractual relationship with the Institute.

Research: A systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge. The term encompasses basic, applied, and developmental research. All forms of scholarship and creative activities are included.

U.S. Public Health Service (PHS)/National Institutes of Health (NIH) and National Science Foundation (NSF) Significant Financial Interest (SFI): One that reasonably appears to be related to the Investigator's Institute responsibilities and consists of one or more of the following.

1. With regard to any publicly traded entity, a SFI exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure; and/or
b. the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds \$5,000 (PHS) or \$10,000 (NSF).
2. With regard to any non-publicly traded entity, a SFI exists if the value of any remuneration received from the entity in the 12 months preceding the disclosure, when aggregated, exceeds \$5,000 (PHS) or \$10,000 (NSF); or when the Investigator (or Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest); or intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.
3. Reimbursed or sponsored travel (for Investigators and Key Personnel under PHS- and NSF-funded research), which is paid on behalf of the Investigator, and not reimbursed to the Investigator directly so that the exact monetary value may not be known by the Investigator, and related to the Investigator's DRI responsibilities. Excluded from this requirement is travel that is reimbursed or sponsored by a federal, state or local government agency, an institution of higher education, or a research institute that is affiliated with an institution of higher education.

Small Business Technology Transfer (STTR): Federally funded program that expands funding opportunities in the federal innovation research and development (R&D) arena. Central to the program is expansion of the public/private sector partnership to include the joint venture opportunities for small businesses and nonprofit research institutions. The unique feature of the STTR program is the requirement for the small business to formally collaborate with a research institution in Phase I and Phase II. STTR's most important role is to bridge the gap between performance of basic science and commercialization of resulting innovations.

Sponsored Project: Those projects and/or activities which are originated and conducted by members of the faculty or, in some instances, by staff members. Such programs are supported wholly or in part by external restricted funds awarded to DRI.

5. EXCLUSIONS

- Salary, royalties, or other remuneration paid by NSHE, DRI or the DRI Foundation to the Investigator if the Investigator is currently employed or otherwise appointed by NSHE, DRI, DRI Foundation, or the Desert Research Corporation.
- Intellectual property rights assigned to NSHE, DRI, or the DRI Foundation and agreements to share in royalties related to such rights.
- Income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator or a Related Party does not directly control the investment decisions made in these vehicles.
- Income from seminars, lectures, or teaching engagements sponsored by a federal, state or local government agency, an institution of higher education, an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education.
- Income from service on advisory committees or review panels for a federal, state or local government agency, institution of higher education, an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education.
- Travel that is reimbursed or sponsored by a federal, state or local government agency, an institution of higher education, an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education.

6. COMMON CONFLICT OF INTEREST SITUATIONS

- When an employee has a financial interest in an entity which transacts business with the Institute.
- When an employee, without proper prior authorization and agreement for reimbursement to the Institute, utilizes or allows utilization of the Institute's facilities, equipment, services, or supplies (including computers, software, copying machines, telephones, stationery, etc.) in any manner that effects a monetary gain or personal benefit to that employee, or to other persons with whom they have business or financial interests.
- When information not available to the general public which is obtained through employment at the Institute is used to further the monetary interests or personal benefits of the employee, or to other persons with whom they have business or financial interests.
- When an employee or their business interest competes with the Institute for grants, contracts, or services with outside sponsoring agencies.
- When the outside activities of the employee conflict with the scheduled Institute duties of the employee.
- When the employee is in the position to influence the selection of a contractor, or negotiation and execution of a contract by the Institute with a business entity in which the employee has a business interest or to other persons with whom they have personal, business, or financial interests.

The above list is not all-inclusive. Employees must be sensitive to any situation where the employee has a business interest that may unfairly benefit from the employee's involvement with the Institute or any other situation that would appear to a reasonable person to be a conflict between public and personal interests.

7. PROCEDURES

Employee Responsibilities

It is the responsibility of each employee to represent and protect the interests of the Institute in all transactions in which the employee is involved.

Disclosure: All DRI employees must complete an annual Conflict of Interest and Outside Compensation disclosure. The Board of Regents Handbook Title 4, Codification of Board Policy Statements and Chapter 11, Section 12, Institute Business Management Policies require employees to inform their immediate supervisor in writing of the nature of the work to be performed and the amount of time likely to be involved, prior to the commencement of the service and to receive a prompt, written determination by DRI's President and/or Vice President for Research that the intended outside service is not in conflict with any current obligations of the Institute.

As required by Federal regulation, all Conflict of Interests must be disclosed prior to the time a proposal is submitted. All disclosures must be updated by Investigators during the period of the award as new reportable Conflict of Interests are obtained.

All Institute employees who through their outside business activities have an actual or potential conflict of interest must file a written statement of the relevant facts with their supervisor. The statement shall include a disclosure of all pertinent factors related to the actual or potential conflict of interest including the nature of the conflict of interest, name of the business entity, nature of the employee's involvement in business entity, nature of the transaction, products and services that may be involved and an evaluation of the actual or potential conflict of interest.

Removal: Institute employees shall remove themselves from representation of the Institute with regard to any transaction that involves a business entity in which the employee has a business interest. Prohibited transactions will include, but not be limited to the preparation of specifications, recommendation of approval, negotiations, receiving, verification of performance, and the approval of payment.

Avoidance: Employees should avoid situations in the course of their employment with the Institute in which they can influence, or appear to influence, actions that may give monetary gain or personal benefit to themselves or to a business entity in which the employee has a business interest, or to other persons with whom they have business or financial interests. Furthermore, employees should avoid providing information not normally available to the

general public, business entities, or to other persons with whom they have business or financial interests which can be used to generate an unfair monetary gain.

Institute Responsibilities: Care must be exercised by the individual representing the Institute in any transaction, where a potential or actual conflict of interest has been identified to ensure that no preferential treatment is given to the employee's business interest. When it has been determined by the Institute that a potential conflict of interest exists and it is in the Institute's best interest to proceed, a disinterested third party will be appointed to administer the activities and to mitigate any potentially unacceptable activities and transactions. DRI review of reports of external commitments and financial interests will: 1) respect the confidentiality of reported information; 2) manage rigorously both real and apparent COI; and 3) provide consistency across DRI in the way that COIs are identified and managed.

DRI is committed to maintaining the confidentiality of reported information as far as is practicable and consistent with legal obligations. Information and written materials are shared only with DRI Officials who are involved in the processing and review of the information and those who create and implement COI Management Plans. Other DRI offices and/or employees may receive information only if it is necessary to perform their work. Individuals with access to confidential personal information are required to sign a confidentiality agreement. If there is a request for DRI to provide disclosure forms, conflict of interest management plans, and related information to an outside entity, the Investigator will be informed of this disclosure.

Compliance: Failure to comply with these policies and procedures may result in the full disciplinary procedures available pursuant to the State of Nevada, Board of Regents, Nevada System of Higher Education, and Desert Research Institute statutes, policies, and procedures. In addition, any employee acting outside of compliance with this policy is not authorized to act for or on behalf of the Institute and may be personally liable for any obligations incurred.

8. REVIEW PROCEDURE

The Executive Division Director, immediate supervisor, or official designee shall conduct an initial review of all disclosures. If the initial determination is made that there may be a potential for COI covered by this policy, then the Disclosure will be referred to the Institute Conflict of Interest Review Committee (CIRC). Committee members will be appointed by a Vice President designated by the President. The CIRC shall be chaired by a member of Senior Leadership designated by the President and shall contain, at a minimum, two faculty members, one division executive director, and a research administrator.

A conflict of interest exists when the CIRC reasonably determines that a Significant Financial Interest could directly and significantly affect the design, conduct, or reporting of the proposed research project. The Committee shall then determine what conditions or restrictions, if any, should be imposed by the institution to manage actual or potential conflicts of interest arising from disclosed Significant Financial Interests.

9. RESOLUTION PROCEDURE FOR INVESTIGATORS

Prior to consideration by the CIRC, the Investigator, in cooperation with the Executive Division Director shall develop and present to the CIRC a Conflict of Interest Management Plan that details proposed steps to be taken to manage, reduce, or eliminate any actual or potential conflict of interest presented by a Disclosure. At a minimum the Management Plan shall address such issues as:

- Public disclosure of significant financial interests;
- Review of research protocol by independent reviewers; and
- Monitoring of research by independent reviewers.

Where the CIRC deems it appropriate, the CIRC shall review the Management Plan and approve it, add conditions or restrictions, which may include the following:

- Modification of the research plan;
- Disqualification from participation in all or a portion of the research funded;
- Divestiture of significant financial interests; or
- Severance of relationships that create actual or potential conflicts of interest.

If the CIRC determines that imposing the above referenced conditions or restrictions would be either ineffective or inequitable, and that the potential negative impacts that may arise from a significant financial interest are outweighed by interests of scientific progress, technology transfer, or the public health and welfare, then the CIRC may recommend that, to the extent permitted by Federal regulations [PHS policy, for instance, does not permit such an action], the research go forward without imposing such conditions or restrictions. In these cases, the DRI President and/or Vice President for Research shall make the final decision regarding resolution.

The approved Conflict of Interest Management Plan shall detail the conditions or restrictions imposed upon the Investigator in the conduct of the project or in the relationship with the Business Enterprise or Entity. The Management Plan shall be signed by the Investigator, the Executive Division Director and, on behalf of the Institute, the DRI President and Vice President for Research. Actual or potential conflicts of interests will be satisfactorily managed, reduced, or eliminated in accordance with these Guidelines and all required reports regarding the conflict of interest submitted to the sponsor prior to expenditure of any funds under an award.

Records of investigator Disclosures and of actions taken to manage actual or potential conflicts of interest, shall be retained by the Vice President for Research's office until three years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving those records.

10. DISCIPLINARY PROCEDURE

Whenever an Investigator has violated this policy or the terms of the Conflict of Interest Management Plan, the CIRC shall recommend sanctions which may include disciplinary action. The CIRC's recommendations on sanctions shall be presented to the DRI President and Vice

President for Research who shall enforce any disciplinary action. In addition, the Institute shall follow Federal regulations regarding the notification of the sponsoring agency in the event an Investigator has failed to comply with this policy. The sponsor may take its own action as it deems appropriate, including the suspension of funding for the Investigator until the matter is resolved.

11. SUBRECIPIENTS AND SUBCONTRACTORS

Subrecipients and subcontractors must either comply with this policy or provide a certification from their institution that they are in compliance with Federal policies regarding investigator conflict of interest disclosure and that their portion of the project is in compliance with their institutional policies.

